
(1934) 08 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 201 of 1932

Jatindra Nath Raha and Others

APPELLANT

Vs

Keramatali Sheikh and Others

RESPONDENT

Date of Decision : 16-08-1934

Acts Referred:

Citation : (1934) 08 CAL CK 0008

Final Decision : Allowed

Judgement

Nasim Ali, J.—The only point for determination in this appeal is whether the Plaintiffs are entitled to enhance the rent of the holding of the Defendants under sec. 30 (b) of the Bengal Tenancy Act. The Courts below on a construction of the kabuliyat Ex. 1 have come to the conclusion that by the kabuliyat Ex. 1 a mokurari tenancy was created. The kabuliyat Ex. 1 has been placed before roe. It appears that the lease in this particular case is not a lease from generation to generation. The words "putra poutradhikrame," that is generation after generation, as used in the lease which was under discussion in the case of Golam Rahaman Mistri v. Gurudas Kundu Choudhury 38 C. L. J. 850 (1923) are not to be found in the present lease. The kabuliyat further indicates that at the end of the survey and settlement the tenant would execute a separate kabuliyat and pay the rent which would be settled. This would be inconsistent with the rent being fixed in perpetuity. Further the fact that the tenant would not be entitled to dig tanks and cut trees without permission of the landlord would go to indicate that only an occupancy holding was in the possession of the tenant which was being confirmed by this kabuliyat. The learned Munsif has laid much stress upon the words "abadharita" and "dharjya." I am, however, inclined to think that these words by themselves do not mean "fixed in perpetuity." They simply indicate the rent fixed or settled by the lease. It is now well settled on authorities that the landlord is entitled to enhance the rent of tenant unless he has expressly given up his right to enhance by contract. There is nothing in the lease Ex. 1 to show that the landlord gave up his right to enhance the rent in future. Under these circumstances I am of opinion that by Ex. 1, a mokurari tenancy was not

created. The holding is only an ordinary occupancy holding and its rent is liable to be enhanced under sec. 30 (6) of the Bengal Tenancy Act. The result, therefore, is that this appeal is allowed, the judgment and decree of the Courts below are set aside and the case is sent back to the trial Court for enhancement of rent under sec. 30 (b) of the Bengal Tenancy Act. There will be no costs in the appeal as the Respondents have not appeared.