

(1898) 02 CAL CK 0010

In the Calcutta High Court

Case No : Appeal From Appellate Decree Nos. 1573 and 1625 of 1896

Kishore Lal Dey and others

APPELLANT

Vs

The Administrator-General Of Bengal, Executor to the Estate
of the late Kumar Indra Chunder Singh

RESPONDENT

Date of Decision : 03-02-1898

Acts Referred:

Citation : (1898) 02 CAL CK 0010

Final Decision : Dismissed

Judgement

1. The Plaintiff in these cases sued the Defendants for the recovery of arrears of rent with interest, for the years 1298--1301, B.S. The suits were brought upon the basis of kabulyats executed by the Defendants' predecessors in interest in 1283, B.S., for five years, and the Plaintiff claimed interest at 75 per cent, upon the arrears as stipulated in these kabulyats. The Court of first instance gave the Plaintiff a decree for the arrears claimed, but held that he was entitled, under sec. 67 of the Bengal Tenancy Act, to interest at only 12 per cent, per annum, on the ground that there was no proof that either Defendants or their predecessors held the land under any fresh settlement after the expiry of the period stated in the kabulyats, and that consequently there was no contract to continue the payment of interest at 75 per cent, per annum. In appeal, the learned District Judge allowed the Plaintiff interest at the rate claimed, because, as the Defendants held over after the expiry of the kabulyats, they were to be presumed to continue to hold at the same rate and under the same conditions as contained in the kabulyats. The Defendants now appeal to this Court. The sole question before us is the question of interest. For the Appellants it is contended that, on the Defendants' holding over, their tenancy, in the absence of any fresh contract, was one which must be taken to have been renewed from year to year, that there was thus a fresh (implied) contract at the commencement of each year, and that consequently, for the years in suit the provisions of sec. 67 of the Bengal Tenancy Act applied, as provided by sec. 178, sub-sec. (3), clause (h) of the same Act.

2. This argument is based upon a passage which occurs in Woodfall's "Landlord and Tenant," 12th Edition, page 207, which is to the following effect:--"When a tenant for a term of years holds over after the expiration of his lease, he becomes a tenant on sufferance; but when he pays or expressly agrees to pay, any subsequent rent, at the previous rate, a new tenancy from year to year is thereby created upon the same term and conditions as those contained in the expired lease....." and it is urged that, in the absence of any rule to the contrary in this country, the rule of English law thus laid down should be applied. The learned vakil was unable to refer us to any other authority in support of his argument.

3. On referring, however, to other passages in the same paragraph, quoted by the learned vakil, it will be found that the author points out that the matter is one of evidence rather than of law, and in the succeeding paragraph states that, in the absence of any evidence, one way or the other, it would seem that upon a holding over and payment of rent, "the jury would be directed to find a tenancy on the terms of the expired lease." In the present case, there is no evidence one way or the other. And it has frequently been held in this Court that, when a tenant holds over, after the expiration of his lease, he does so on the terms of the lease, on the same rent and on the same stipulations as are mentioned in the lease, until the parties come to a fresh settlement; see the cases of *Srimuty Altab Bibee v. Joogul Mundul* 25 W. R. 234; *Shea Sahoy Singh v. Bechun Singh and others* 22 W. R. 32, *Tara Churn Banerjee v. Ameer Mundul and others* 22 W. R. 395, *Sheik Enayutoollah v. Sheik Elaheebaksh* W. R. (1864) Art X Cases, p. 42.

4. So far as we are aware, there is no general rule of law to the effect that the lease of an agricultural tenant in this country, who holds over must be taken as renewed from year to year. The provisions of sec. 116 of the Transfer of Property Act are by sec. 117 expressly restricted to leases other than agricultural leases. It would seem that a tenant, who holds over with the consent of the landlord, does so upon the same conditions as those set out in his time expired lease; and that if any contract is to be implied, as contended for on behalf of the Appellants, it should be taken to have been entered into so soon as the term of the lease expired rather than at the beginning of each year. The term of the kabulyat in this case expired some years before the Bengal Tenancy Act came into force; and it therefore follows that the Defendants are liable under that contract to pay interest on arrears of rent at the rate stipulated in the kabulyats of 1283, B.S. In this view we dismiss both these appeals with costs.