

(1922) 08 CAL CK 0044
In the Calcutta High Court

Krishna Kamini Dasi and Another

APPELLANT

Vs

Nil Madhab Saha and Others

RESPONDENT

Date of Decision : 16-08-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 50(1), 50(2), 50(3)

Citation : AIR 1923 Cal 66 : 73 Ind. Cas. 312

Hon'ble Judges : Rankin, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. These seventeen appeals arise out of as many proceedings, instituted by landlords under Section. 105 of the Bengal Tenancy Act for assessment of fair and equitable rent in respect of lands included in tenures held under them. The tenure-holders contended that they were entitled to the benefit of the presumption formulated in Section 50(2) of the Bengal Tenancy Act and were consequently protected from enhancement u/s 50(1). It was found that the original tenures had been subdivided with the consent of the landlords; each fragment was held at a proportionate rent and the aggregate rent was equal to the original rent. Not with standing this, the Revenue Officer held that the provisions of Section 50 were inapplicable to the disputed tenures, which must be deemed to be new tenures the rent whereof was liable to enhancement. On appeal, the Special Judge held that the sub-division of a tenure does not operate as a breach of the continuity of the tenure, if each fragment is held at a proportionate rent and the aggregate rent equals the original rent. The Special Judge, however, reviewed his decision and ultimately adopted the view taken by the Revenue Officer. We have now to consider whether the earlier or the later view which commended itself to the Special Judge is correct.

2. Section 50(3) of the Bengal Tenancy Act provides as follows.

The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

3. With reference to this provision, it was ruled by Sharfuddin and Coxe, JJ., in *Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup* 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410 that where a tenure existed from long before the Permanent Settlement but was subsequently split up into two equal halves, each bearing one-half of the original rent, the old tenure could not be regarded as continued in the shape of the two new tenancies. The Court held that the words "so far as it relates to land held by a raiyat" in Section 50(3) clearly imply that the operation of the section, so far as it relates to land held by a tenure-holder, is affected by the separation of the land from other land which formed with it a single tenure. It is plain that the Court held the maxim applicable, *expressio unius est exclusio alterius*. The construction of Section 50(3) adopted in this case has, however, found no favour with the Courts.

4. In *Mulluk Chand Das v. Satish Chandra Das* 3 Ind. Cas. 306 : 11 C.L.J. 56 : 14 C.W.N. 335 where *Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup* 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410 was cited, the Court declined to lay it down as an inflexible rule of law of universal application that whenever the lands of a tenancy have been sub-divided, there is a creation of new tenancies, destructive of the original obligation, and added that the effect of the division must depend upon the intention of the parties. Again, in *Jyoti Prosad Singh v. Lachipur Coal Copany* 12 Ind. Cas. 482 : 16 C.W.N. 241 : 38 C. 845 : 14 C.L.J. 361 Coxe, J., who had been a party to the previous decision, distinguished it with the concurrence of Teunon, J., and held that where the original grant was that of a permanent tenure, the mere fact that subsequently the tenure was split up into more than one would not affect the permanent character of the tenancies. The decision in *Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup* 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410 was again pressed upon the attention of the Court in *Bisseswar Roy Chowdhry v. Rajendra Kumar Singha* 25 Ind. Cas. 228 : 18 C.W.N. 949; but the endeavour was fruitless. In *Adit Singha v. Sukhraj Rai* 21 Ind. Cas. 385 : 17 C.L.J. 435 the Court reserved its opinion upon the question decided in *Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup* 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410 but pointed out that under the Bengal Rent Recovery Act, 1859, the principle recognised in Section 50(3) as applicable to raryati holdings had been applied to tenure"s, *Kazee Khoda Newaz v. Nubo Kishore Raj* 5 W.R. Act X, Rul. 53, *Raj Kishore Mookerjee v. Hureehur Mookerjee* 10 W.R. 117 : 1 B.L.R. (S.N.) VIII : 1 In 1. Dec. 409, *Kasheenath Lushkur v. Bamasoonduree Debia* 10 W.R. 429 and *Soodha Mookhee Dassee v. Ram Guttee* 20 W.R. 419. In *Chand a Kanta Chakravarty y. Ram Krishna Mahalnabis* 36 Ind. Cas. 707 : 20 C.W.N. 1002 : 24 C.L.J. 275 the proposition was treated as well-settled that the continuity of a transferable tenure is not affected by sub-division or by consolidation. The Court added that the decision in *Uday Chandra Karji v. Maharaja Nripendra Narayn Bhup* 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410 overlooked, as had been already pointed out in *Adit Singha v. Sukhraj Rai* 21 Ind. Cas. 385 : 17 C.L.J. 435 the pre-existing law on the subject, as indicated in the cases of *Hills v. Huro Lall* 3 W.R. Act X. Rul. 135 : 2 Board Dec. 676 and

Kazee Khoda Newaz v. Nubo Kishore Raj 5 W.R. Act X, Rul. 53, which are in conformity with Ramnath v. Robert Watson and Company (1863) Sev 36 : Board Dec. 169, Sukhimani v. Gangagobinda (1864) 2 Board Dec. 181 Hill v. Basarat Mir (1864) 2 Board Dec. 192 Ram Kumar v. Raghab Mondal (1865) 2 Board Dec. 277 and Gopal Chandra v. Mathuramohan (1865) 2 Board Dec. 675. In Jagabandhu Saha v. Magnamoyi Dassi 36 Ind. Cas. 884 : 44 C. 555 : 24 C.L.J. 363 : 22 C.W.N 89 the proposition was again affirmed that as the tenure was divisible, the fact of sub-division was not a breach of its continuity, and each fragment, carved out of the original (sic), retained its incidents. To the same effect is the decision in Prosanna Deb Roykot v. Safuruddin Ahmed 46 Ind. Cas. 433, where it was ruled that mere sub-division of an old tenure or amalgamation does not necessarily mean the creation of a new tenure, so as to destroy the presumption u/s 50(2) of the Bengal Tenancy Act, and the Court did not follow the decision in Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410as Chatterjee, J., had not done many years earlier in Pirthi Chand Lal v. Sheikh Hazari 9 Ind. Cas. 453.

5. The position thus is, that the decision in Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410 stands by itself, and every effort made to induce the Court to follow it has been unsuccessful. It is further plain that when the decision was pronounced, the attention of the Court was not drawn to the fact that, under the pre-existing law, it was firmly established in respect of tenures at least, that neither sub-division nor amalgamation necessarily destroyed their continuity. It is difficult to believe that if the Legislature intended to introduce such a fundamental change in the existing law, the object would be attempted to be achieved by implication. The alteration would seriously prejudice all tenure-holders in the country with retrospective operation. If Sub-section (3) is interpreted as a provision enacted in favour of the raiyat and against the tenure-holders, it would restrict the operation of Sub-section (1) as also of Sub-section (2) to the case of tenure-holders, only so long as the tenures were not sub-divided or amalgamated. Sub-section (1), it will be observed, contains the substantive rule on the subject of protection from enhacement, while Sub-section (2) deals merely with the mode of proof. If Sub-section (3) had the effect attributed to it, the result would follow that, even in the case of a tenure, proved by direct evidence to have been created before the date of the Permanent Settlement, and to have been held at an unchanged rent or rate of rent since that time, the protection afforded by Sub-section (1) would disappear in the event of sub-division, whether prior or subsequent to the enactment of the Bengal Tenancy Act. If an alteration of this character in what was settled law in respect of tenure-holders had been intended, an express provision would have been made in that behalf. We are of opinion that Sub-section (3) must have been introduced solely with a view to secure the position of raiyats which it is well-known, was the chief aim of the legislation culminating in the Bengal Tenancy Act and not with a view to injure the position of tenure-holders. In fact, an examination of the judicial decisions

shows that while the rights of tenure-holders in respect of the matter now before us, were assured, the positions of raiyats was by no means equally clear, see the decision of Sir Richard Couch, C.J., in *Moula Buksh v. Judoonath Sadoo Khan* 21 W.R. 267. In our judgment, this is not a case where the maxim *expressio unius exclusio alterius* can be safely applied.

6. It may be conceded that, as stated by Sir Barnes Peacock in delivering the judgment of the Judicial Committee in *Blackburn v. Flavelle* (1881) 6 App. Cas. 628 at p. 634 : 50 L.J.P.C. 58 : 45 L.T. 52 : 30 W.R. 67 a general rule of construction of Acts of Parliament is *expressio unius exclusio alterius*. Now need we dispute the accuracy of the statement quoted from the judgment of Hargrave, J., in *Drinkwater v. Arthur* (1879) 10 Sup. Ct. N.S.W. 103: "If there be any one rule of law clearer than another as to the construction of all Statutes and all written instruments (as, for example, sales under powers in deeds and Wills), it is this: that where the Legislature or the parties to any instruments have expressly authorised one or more particular modes or sale or other dealing with property, such expressions always exclude any other mode except as specifically authorised."

7. But it is important to bear in mind that the method of construction summarised in the maxim cannot be applied without limitation, for a failure to make an *expressio* complete may easily arise from the accidents of Legislative procedure, and it is common to find provisions put into Statutes *ex abundanti cautela* and at the instance of parties interested. Consequently, provisions sometimes found in Statutes enacting imperfectly or for particular cases only, that which was already and more widely the law, have occasionally furnished ground for a specious argument, based on the maxim, that an intention to alter the general law was to be inferred from the partial or limited enactment. But the maxim is plainly inapplicable in such cases. The only inference which a Court can draw from such superfluous provisions (which often find a place in Acts to meet unfounded objections and idle doubts) is that the Legislature was either ignorant or unmindful of the real state of the law or that it acted under the influence of excessive caution. This point of view is lucidly explained in the following passages, from the judgment of Farewell, L.J., in *Lowe v. Dorling* (1906) 2 K.B. 772 : 75 L.J.K.B. 1019 : 95 L.T. 243 : 22 T.L.R. 779:-

Acts of Parliament are not, in my experience, expressed with such accuracy and precision as to justify the Court in striking out unambiguous words in order to make a sentence grammatical or logical. The generality of the maxim "*expressum facit cessare taciturn*", which was relied on, renders caution necessary in its application. It is not enough that the express and the tacit are merely incongruous, it must be clear that they cannot reasonably be intended to co-exist." In *Colquhoun v. Brooks* (1887) 19 Q.B.D. 406 : 57 L.J.Q.B. 70 at p. 73 : 57 L.T. 448 : 36 W.R. 332 Wills, J., says: "I may observe that the method of construction summarised in the maxim "*Expressio unius exclusio alterius*" is one that certainly requires to be watched. Perhaps few so-called rules of

interpretation have been more frequently misapplied and stretched beyond their due limits. The failure to make the "Expressio" complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind; and the application of this and every other technical rule of construction varies so much under differing circumstances, and is open to so many qualifications and exceptions, that it is rarely that such rules help one to arrive at what is meant." Lopes, L.J., in the Court of Appeal *Colquhoun v. Brooks* (1888) 21 Q.B.D. 52 at p. 65 : 57 L.J.Q.B. 439 : 59 L.T. 66 : 36 W.R. 657 : 52 J.P. 645 says: "the maxim "Expressio unius exclusio alterius" has been pressed upon us I agree with what is said in the Court below by Wills, J., about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of Statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.

8. It may be observed that the view taken by Wills, J., in *Colquhoun v. Brooks* (1887) 19 Q.B.D. 406 : 57 L.J.Q.B. 70 at p. 73 : 57 L.T. 448 : 36 W.R. 332 which gave way to that of Stephen, J., in the Division Court was approved by Lord Esher, M.R., and Lopes, L.J., in the Court of Appeal, *Fry, L.J., dissenting, Colquhoun v. Brooks* (1888) 21 Q.B.D. 52 at p. 65 : 57 L.J.Q.B. 439 : 59 L.T. 66 : 36 W.R. 657 : 52 J.P. 645 and, ultimately the decision in the House of Lords was in accordance with the dissentient judgment of Wills, J., *Colquhoun v. Brooks* (1889) 14 A.C. 493 : 59 L.T. 850 : 38 W.R. 289.

9. We may also usefully, re-call here the warning given by Lord Halsbury in *McLaughlin v. Westgarth* (1906) 75 L.J.P.C. 117 : 94 L.T. 831 : 22 T.L.R. 594: "It might be that modern Statutes were drawn with greater particularity and minuteness. The misfortune in the framing of those Statutes was that any body of persons, seeing a possibility of liability on their part, apply to Parliament to have special provisions inserted for their protection. That application was occasionally complied with, and then the argument arose, which their Lordships had heard that day, namely, that any body who is not included in the enumeration of the particular persons so interested, must be taken to be excluded by the operation of the Statute from protection just because they were not excluded and others were. The doctrine applicable to all such cases was that a great many things were put into a Statute *ex abundanti cautela* and it was not to be assumed that any body not specifically included was for that reason alone, excluded from the protection of the Statute." It may be mentioned here that before the High Court of Australia, *McLaughlin v. Fosbery* (1904) 1 Com. L.R. 546 at p. 552 the position that the protection given by (sic) Statute must be construed strictly as *ex-tena*ing only to those persons who are expressly mentioned and to things done *tinder* the Statute had been attempted to be supported by reference to *Fletcher v. Fletcher* (1859) 1 E1. & E1. 420 : 117 R.R. 271 : 28 L.J.Q.B. 134 : 5 JUR. 678 : 120 B.R. 967, *Thomas v. Saunders* (30), (sic) *v. Allen* (1845) 1 C.B. 18 : 14 I.J.C.P. 136 : 68 R.R. 652 : 135 E.R. 441, *R v.*

Pinder, In re Greenwood (1855) 24 L.J.Q.B. 148 : 1 Jur. 522 and Griffith v. Taylor (1877) 2 C.P.D. 194 : 46 L.J.C.P. 152 : 36 L.T. 5 : 25 W.R. 196. In support of the view taken in Mctauglin v. Weslgarth (1906) 75 L.J.P.C. 117 : 94 L.T. 831 : 22 T.L.R. 594 reference may also be made to West Derby Union v. Metropolitan Life Assurance Society (1845) 1 C.B. 18 : 14 I.J.C.P. 136 : 68 R.R. 652 : 135 E.R. 441 Mollwo, March & Company v. Court of Wards (1872) 4 P.C. 419 : 10 B.L.R. 312 : 9 Moo. P.C. 214 : 18 W.R. 384 : I.A. Sup. Vol. 86 : 3 Sar. P.C.J. 168 : 17 E.R. 495 (P.C.), Duke of Newcastle v. Morris (1870) 4 H.L. 661 at p. 671 : 40 L.J. Bk. 4 : 23 L.T. 569 : 19 W.R. 26.

10. Our conclusion is that the maxim *expressio unius exclusio alterius* has no application to the present case, that Section 50(3) was inserted for the benefit of raiyais and not with a design to prejudice tenure-holders, that the operation of Section 50(1) and 50(2) is not excluded in the case of tenures merely by reason of sub-division or amalgamation and that the decision to the contrary effect in Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup 1 Ind.Cas. 4 : 36 C. 287 : 13 C.W.N. 410 cannot be supported on principle. In this view, we need not consider whether the Special Judge should have at all entertained the application for review of judgment. But we may add that the decision of the Judicial Committee in Chhajju Ram v. Neki 72 Ind. Cas. 566 : 49 I.A. 144 : 30 M.L.T. 295 : 26 C.W.N. 697 : 41 P.L.R. 1922 : 3 P.L.T. 435 : AIR (1922) (P.C.) 112 : 16 L.W. 37 17 P.W.R. 1922 : 3 L. 127 : 43 M.L.J. 332 : 24 Bom. L.R. 1238 : 4 U.P.L.R. (P.C.) 99 : 36 C.L.J. 459 (P.C) lends support to the construction of the appellant that the review should not have been granted.

11. The result is that these appeals are allowed, the decrees made by the Special Judge after review, on the basis of his judgment dated 5th April 1919, are set aside and the decrees originally made by him pursuant to his judgment dated 25th May 1918 are restored. The appellants are entitled to their costs in this Court. The hearing fee will be assessed at one gold mohur in each case.