

**(1921) 01 CAL CK 0020**  
**In the Calcutta High Court**  
**Case No : App. No. 2057 of 1918**

Krishna Kumar Shaha Roy and others

APPELLANT

Vs

Piru Fakir and others

RESPONDENT

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**Date of Decision :** 20-01-1921

**Acts Referred:**

**Citation :** (1921) 01 CAL CK 0020

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## Judgement

1. The plaintiff-appellant, had a raiyati holding which he sub-let to the defendants. The under raiyati kabuliat provided for payment of 57½ maunds of paddy. It further provided that on default of payment the landlord would be entitled to a certain sum of money as the price thereof. The plaintiff brought this suit for rest upon the basis of those terms. The suit was decreed by the Court of first instance, but the lower Appellate Court held that under the provisions of S. 48, Cl. (a) of the Bengal Tenancy Act the plaintiff was not entitled to recover any sum exceeding 50 per cent of the rent payable by the plaintiff to his landlord, and he gave a decree accordingly. The plaintiff has appealed and it is contended that the rent provided in the contract was not a money rent and that the case, therefore, did not come within the scope of S. 48 (a) of the Bengal Tenancy Act. We think that this contention must prevail. The kabuliat as stated above provides for payment of 57½ maunds of paddy according to a certain measure (85-106 tolas to the Seer) and although there is a provision that the landlord would be entitled to realise Rs. 115 as the price of the paddy, we do not think that that makes it a money rent. It is to be observed that the schedule of installments mentions paddy, namely, 20 maunds in Bkadra, and 37½ maunds in Pous. The interest payable in default of payment of paddy was also payable in kind, namely, 10 seers to the maund.

2. Having regard to the terms of the kabuliat, we think that the rent on which the land was held was rent in kind. In the case of Sheikh Kanaraddi v. Moumohine Dasya (1917) 29 C.L.J. 234 = 41 I.C. 373, the defendant an under-raiyat undertook by a registered contract of tenancy to deliver to his landlord certain quantity of paddy as rent for each year, and there was a stipulation that if

there was default on the part of the tenant, the landlord would be entitled to realise a certain sum of money as the price of the paddy. It was held that S. 48 (a) of the Bengal Tenancy Act was not applicable, the rent not being payable in cash but in kind and the contract only provided the measure of the damage which the landlord could claim in the event of default on the part of the tenant.

3. The case of *Ananda v. Makram* (1909) 10 C.L.J. 144 = 3 I.C. 204, which has been cited before us on behalf of the respondents was distinguished in that case. We are, accordingly, of opinion that S. 48 (a) of the Bengal Tenancy Act does not apply to the present case.

4. The next question for consideration is whether the defendants are entitled to abatement of rent in respect of plot No. 2 from which they have been evicted by the superior landlord. With respect to this plot of land the defence was that the plaintiff had surrendered the same to the superior landlord who thereupon evicted him and built a cutchery on it. The Court of first instance was of opinion that the cutchery was not built on that land, and so it was not necessary for that Court to go into the question of surrender.

5. On appeal the learned Sub-Judge was of opinion that the cutchery was built on the land, but he held that the eviction was subsequent to the execution of the kabuliat in favour of the plaintiff. We do not think that disposes of the matter. Eviction by a title paramount may be a good defence in a suit for rent, but as pointed out in Foa's *Law of Landlord and Tenant*, 4th Edition, at page 168, in order to constitute a good defence in such a case, three conditions must be fulfilled one of them being that the party evicting must have a good title. See also the case of *Noorijan Sardar v. Bimola Sundari Gupta* (1913) 18 C.W.N. 552 = 18 I.C. 87.

6. The question, whether the person evicting had a good title or not, was not gone into. We are accordingly, of opinion that the case must go back to the lower Appellate Court in order that that question may be decided and the case disposed of in accordance with law, and we direct accordingly.

7. Costs will abide the result.