
(1925) 11 CAL CK 0011
In the Calcutta High Court

Mahammad Ismail Mia and Others

APPELLANT

Vs

Suresh Chandra Saha Chowdhury and Others

RESPONDENT

Date of Decision : 20-11-1925

Acts Referred:

Citation : AIR 1926 Cal 946 : 96 Ind. Cas. 616

Hon'ble Judges : Hugh Walmsley, J;Chakravarti, J

Bench : Division Bench

Judgement

Chakravarti, J.—This is an appeal preferred by the defendants against the judgment and decree of the Subordinate Judge, Third Court of the 24-Parganas, dated the 19th March, 1923. It arises out of a suit for rent of a permanent tenure held by the defendants. The tenancy is one which is usually called an a bad in the Sundarbans, the plaintiffs being the holders of the superior estate granted by Government. Out of the larger area which the plaintiffs-landlords obtained from Government, a portion was leased out to the defendants' predecessor for reclamation and cultivation. The plaintiffs claimed rent for the years 1324 to 1327 B.S. There was no dispute as regards the amount of the rent due. But the defence of the defendants was that the landlords, the plaintiffs, who held the northern part of fix abad in khas, with a view to put an end to the defendants' tenancy, for the purpose of making it khas, deliberately and fraudulently allowed the embankments on the north of the abad to be destroyed and thus allowed salt water to rush "in not only to the plaintiffs' own part of the abad but also to the defendants' tenure on the south. The defendants' case, therefore, was that, as the plaintiffs fraudulently allowed the defendants' property to be inundated with salt water and thug rendered it unfit for cultivation, their right to realize rent from the defendants was suspended. The main issue between the parties, therefore, was "whether the landlords lost their right to recover rent on the ground stated by the defendants." The learned Subordinate Judge in an elaborate judgment, after examining the evidence at length, came to the conclusion that the story of the defendants that the plaintiffs deliberately, with a view to injure the defendants' property, allowed salt water to rush into their

abad, was not true. The Court below has, in fact, found that the rush of water was not through the northern part of the abad, but that the inundation took place in a different manner and that the plaintiffs were in no way responsible for it. It is unnecessary for us to deal with the evidence at length. I do not think that there is any sufficient reason for us to differ from the finding arrived at by the learned Judge.

2. Now, as I have already stated, this was a permanent tenure. The learned Vakil for the defendants-appellants contended that, apart from the question as to whether or not the landlords deliberately destroyed the defendants' property, as a matter of fact the tenure became unfit for profitable use in natural course, the defendants were entitled to so pension of rent because they were unable to make profitable use of the lands of their tenure. As to this, the learned Subordinate Judge seems to hold that the defendants had the opportunity of making a profitable use of their property because, on the evidence, he finds that a profitable use of the abad could be made by letting it out in fishery, which is more profitable than the profits derived by cultivation. It was contended by the learned Vakil for the defendants that the landlords were bound to protect the property of the tenure-holders so that they might use it for the purpose of cultivation and make profits from the tenure. In the case of a permanent tenure, the rights of the parties are governed by the contract under which the tenure was created. Such a tenure really passes all the rights of the landlord in favour of the tenant in lieu of periodical payment of what is called the rent. What is called the proprietary right is really vested in the permanent tenant. The defendants had the lease in their possession and, as the learned Subordinate Judge observes, they have not produced it. It cannot, therefore, be said that, under the terms of the contract by which this tenure was created, the landlords were under any obligation to protect the property by raising embankments on the side which was open to attack by salt water. From the very nature of the thing, no cultivation is possible of such a property, unless protective embankments are made. Unless the permanent tenure-holder shows that the landlord is bound under the terms of the contract to protect the property for the use of the tenant, I am not aware of any general principle on which the landlord of this tenure would be under any obligation to build such embankments. So far as I know, a special provision is always inserted in the lease as to who should protect the property from the encroachment of salt water. The rent reserved in the lease is usually determined by the fact as to whether the landlord undertakes that responsibility or the tenant takes upon himself the responsibility of building such embankments. The learned Vakil for the defendants-appellants further contended that on the principle enunciated in the case of *Sheik Enuyutoollah v. Sheik Elaheebuksh* W.R. 1864 Act X. Rul. 42, there is a general obligation upon the landlord to protect the tenants' property from being damaged or injured by actions either of the sea or of salt water from the river. As I read that judgment, that was a peculiar case as between the landlord and the raiyat. There was some question as to whether the raiyati was an occupancy right. In cases where raiyals

claim abatement of rent on the ground of drought or inundation, raiyats have to make out a binding custom to that effect. I am not aware of any case where the principle contended for by the learned Vakil for the appellant has been applied to raiyats in the absence of a custom prevailing in the village or that it has ever been applied to a permanent tenure. In fact, the learned Vakil very frankly confessed that there is no case directly on the point. In the recent Privy Council case of AIR 1925 97 (Privy Council) , their Lordships of the Judicial Committee have clearly laid down the law as to the position of a permanent tenure-holder in the land demised to him.

3. Their Lordships have pointed out that the tenant under a permanent and transferable lease held at a fixed rent "virtually becomes the proprietor of the surface of the lands subject only to the payment of the stipulated rent, and the lessor and the succeeding landlords have no interest in the lands except in so far as they form a security for the payment of rent." This clearly indicates that the landlord loses all interests except those indicated as above and that the property is really the property of the permanent tenure-holder, and there seems to be no reason, based on general principle, upon which it can be held that, after a proprietor has parted with his land in favour of a permanent tenure-holder, he is under any obligation, unless there is a special contract to that effect, to protect the interest of the tenure-holder in the manner suggested. I think, therefore," that the defendants appellants have made out no case on which they can rely for a suspension of the rent which is due to the landlords for the land of this permanent tenure. When the specific case of wilful destruction, of the property has failed, I do not see how the tenant can resist the claim for rent.

4. The appeal is, therefore, dismissed with, costs.

Walmsley, J.

5. I agree.