

(1917) 02 CAL CK 0012
In the Calcutta High Court

Maharaja Bahadur Sir Prodyat Kumar Tagore and Another	APPELLANT
Vs	
Maharulla Sandar	RESPONDENT

Date of Decision : 02-02-1917

Acts Referred:

Bengal Tenancy Act, 1885 — Section 29

Citation : 39 Ind. Cas. 497

Hon'ble Judges : Richardson, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal from a decision of the learned District Judge of Rungpore, dated the 17th April 1915, affirming the decision of the Munsif of the same place. The suit was brought to recover rent in arrears. The rent sought to be recovered was at the rate of Rs. 7-15-0 a year for the years 1318 and onwards. The defendant executed a Kabuliyat in which there is a term which is not confined to the present case only, but I have noticed it to exist in many other cases. The tenant promised to agree to pay Rs. 3 5-C as the yearly (payable) talabi rent until the expiry of the term. On the expiry of the term, the rent was stated to be Rs. 7-15-0. In the schedule that precedes the document there is a statement of the rent and the deduction. But the contract in this particular case is quite clear. The yearly talabi rent which the tenant promised to pay was stated to be Rs. 3-5-0 and, on the expiry of the term, it was stated that the tenant agreed to pay according to the above-mentioned arrangement the sum of Rs. 7-15-0. The facts found by the lower Appellate Court are these. Prior to this Kabuliyat, the tenant held the land at a rent of Rs. 2-7-0 per annum; that he had been in possession of the land for many years and that, therefore, he had a right of occupancy in the land. The rent was raised from Rs. 2-7-0 to Rs. 3-5-0 at the time of the execution of this Kabuliyat on the 12th Chaitra 1311 B.S. That being so, an attempt to recover from the tenant Rs. 7-15-0 a year was clearly in breach of the provisions contained in Section 29 of the Bengal Tenancy Act, namely, that the rent payable by the tenant having a right of occupancy should not be increased by more than the amount stated in that section. That seems to

be amply sufficient to dispose of this case. The rent having been found to have been prior to 1311 Rs. 2-7-0, it is manifest that if due regard be had to the provisions of Section 29 of the Bengal Tenancy Act, under no possible condition can the landlord enhance the rent so as to amount to Rs. 7-15-0. That being the case, the present appeal must fail and be dismissed with costs.

Richardson, J. I agree.