

(1914) 05 CAL CK 0046
In the Calcutta High Court

Maharaja Jagadindra Nath Roy

APPELLANT

Vs

Mohendra Nath Mozumdar and Others

RESPONDENT

Date of Decision : 19-05-1914

Acts Referred:

Bengal Tenancy Act, 1885 — Section 195

Citation : 52 Ind. Cas. 90

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

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for recovery of arrears of rent. The case for the plaintiff is that the defendants are occupancy raiyats in respect of a large tract of land within his estate which was has settled with him by Government for a period of 10 years from 1st April 1909, The plaintiff alleges that the rent payable by the defendants has been fixed at Rs. 1,659-13-0 in the settlement proceedings, and he claims to recover arrears at that rate. The defendants contend that the rent was payable at the annual rate of Rs. 1,239-9-12 gds. that such rate has not been affected by the proceedings of the settlement authorities and that whatever was due has been paid to the landlord. The Courts below have concurrently dismissed the suit.

2. On the present appeal it has been argued that u/s 9 of Regulation VII of 1822, the rent payable by the defendants was, as a result of the settlement proceedings, enhanced to Rs. 1,659-13-0 per annum. In our opinion there is no foundation whatever for this contention. Section 9 of the Regulation prescribes the mode of investigation by Collectors who are called upon to make a revised settlement. The first paragraph of the first clause of that section is in these terms: "It shall be the duty of Collectors and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land revenue, to unite, with the adjustment of the assessment and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests

and privileges of the various classes of the agricultural community." The second paragraph then provides that the proceedings shall embrace the formation of as accurate a record as possible of all local usages connected with landed tenures and of various other matters specified therein. The last paragraph of the first clause upon which reliance is specially placed provides that "the information collected on the points previously mentioned shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts of Judicature, it being understood and declared that all decisions on the demands of the Zemindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceedings, until distinctly altered by mutual agreement or after full investigation in a regular suit and all cesses for collections not avowed and sanctioned nor taken into account in fixing the Government jama shall be held illegal and unauthorised, unless now or hereafter specially sanctioned by Government." Stress is laid on the words all decisions on the demands of Zemindars shall be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement," and it is argued that this supports the view that the effect of an entry by the settlement authorities as to the fair rent payable by the cultivator has the effect of enhancement of his rent. In our opinion, the words, upon which reliance is placed, do not support the contention of the appellants. It is well settled that a Settlement Officer under Regulation VII of 1822 does not settle rent, but records rates of rent existing in the village. This view has been taken in a long series of cases, *Nawab Nazim of Bengal v. Ram Lal Ghose* 6 W.R. Act X Rulings, 5, *D'silva v. Raj Coomar Dutt* 16 W.R. 153 *Enayetollah Meah v. Nubo Coomar Sircar* 20 W.R. 207 *Ledlie v. Sreemutty Doorga Monet Dossee* 21 W.R. 410 *Reazooddeen Mahomed v. Mc-Alpine* 22 W.R. 540, *Akshoya Kumar Dutt v. Shama Charan* 16 C. 586 : 8 Ind. Dec. (n.s.) 387 *Watson & Co. v. Mohendro Nath Paul* 23 W.R. 436 and *Zamir Mandal v. Shama Charan Singh* 5 Ind. Cas. 296 : 11 C.L.J. 66. Reference, however, has been made to the provisions of Section 195 of the Bengal Tenancy Act to show that nothing in the Bengal Tenancy Act, specially Section 23, which provides that where an occupancy raiyat pays his rent in money his rent shall not be enhanced, except as provided by that Act, can affect the powers and duties of a Settlement Officer as defined by any law not expressly repealed by the Bengal Tenancy Act. This clause is of no assistance to the appellant, because Section 9 of Regulation VII of 1822 does not authorise the settlement authorities to enhance the rent payable by raiyats.

3. It has finally been argued that the Act III of 1878 B. C. lends some support to the interpretation of Section 9 of Regulation VII of 1822 put forward on behalf of the appellant. We are of opinion that the provisions of that Act justify precisely the opposite inference; it only shows that the settlement authorities had, in some instances, erroneously undertaken to settle fair rents and had thereby enhanced the rents payable by tenants, in contravention of the provisions of the Bengal Rent Acts of 1859 and 1868.

4. As a last resource, it has been argued on behalf of the appellant that the present suit may be treated as a suit for enhancement of rent and that the question of the fair rent payable by the defendants may be investigated herein. But it would be obviously unfair to the defendants to allow the plaintiff to treat this suit for rent as a suit for enhancement of rent. The suit was instituted on the theory that the rent payable by the defendants had been lawfully enhanced as a result of the proceedings under Regulation VII of 1822. That claim is unfounded and has been successfully contest-ed. It is too late for the plaintiff now to turn round and ask that the scope of the suit may be entirely altered.

5. The result is that the decree of the District Judge is confirmed and this appeal dismissed with costs.