
(1912) 03 CAL CK 0003
In the Calcutta High Court

Maharaja Manindra Chandra Nandi

APPELLANT

Vs

Jagannath Khan

RESPONDENT

Date of Decision : 19-03-1912

Acts Referred:

Citation : 14 Ind. Cas. 229

Hon'ble Judges : Coxe, J

Bench : Single Bench

Judgement

Coxe, J.—The plaintiff's predecessor-in-interest let the land in suit to one Mr. Martin at the rent of Rs. 40-4 sicca. It consisted of garden and bantu land and it was stipulated that if any of the garden was converted into bantu land, the rent on it should be raised from Rs. 5 to Rs. 10 a bigha. There was also a stipulation for payment of rent on excess land. The plaintiff alleged that the whole land had been converted into bastu, that there was a growing custom that such lands should bear a rent of Rs. 20 a bigha, and asked that the land should be measured and a decree for rent given him at the rate of Rs. 20 a bigha for the area found by measurement.

2. The defendant is the present tenant of the land.

3. The learned Sub-Judge found that the area had not increased; that the garden land, except an area of 1 bigha 8 cottahs, had been converted into bastu, and gave the plaintiffs a decree in accordance with the rates stipulated in the qabuliat.

4. The plaintiff appeals. It is first argued on his behalf that a decree should be given at an enhanced rate, as there is no stipulation in the qabuliat against enhancement. It is said that it is not proved or found that the landlord cannot eject the defendant; and if he has the power to eject, a fortiori he must have the power to enhance. It seems to me, however, that the case must be governed by the contract between the parties and I can see no reason why, in a case not coming under the Tenancy Act and in which there is no special stipulation for enhancement, the tenant should pay, or be compelled to pay, either a fair rent,

or a customary rent, or a prevailing rent, or indeed any rent except that which he has covenanted to pay. No doubt, the landlord may terminate a lease, if he is entitled to do so, and may thereafter settle the land at a higher rent or refuse to let the tenant continue to hold the land unless he agrees to pay more; or perhaps he might sue thereafter for damages for use and occupation and obtain damages calculated on the rent that he could have obtained for the land if the tenant had not been in possession. But during the continuance of the tenancy, he cannot get more than the tenant has contracted to pay. This was held in *Ranee Lalunmonee v. Rajah Ajodhya Ram Khan* 23 W.R. 61 which was followed in *Kylash Chunder Sircar v. Woomanund Roy* 24 W.R. 412 and *Krishna Kant Saha v. Krishna Chandra Roy* 9 C.W.N. 303.

5. It has also been contended that the learned Subordinate Judge has erred in holding that an area of 1 bigha, 8 cottahs still remains as garden, and that the standard of measurement is a rassi of 55 yards. But neither of these findings, in my opinion, is open to attack in second appeal.

6. The appeal must be dismissed but as no one has appeared on behalf of the respondent prepared to argue the case, I do not allow costs.