
(1933) 06 CAL CK 0007
In the Calcutta High Court

Manohar Baidya and Another

APPELLANT

Vs

Bhabasidhu Mondal and Others

RESPONDENT

Date of Decision : 19-06-1933

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 52

Citation : AIR 1934 Cal 121 : 150 Ind. Cas. 90

Judgement

1. This appeal has arisen out of an application made by the landlord respondent to this Court for settlement of fair and equitable rent in respect of a tenancy. There was a claim by the landlord for additional rent for additional area. The question raised in this behalf as between the landlord and the tenants concerned was this, as set out in issue 3 raised for determination in the case:

2. Is the plaintiff entitled to get additional rent for additional area? If so what is the excess area and what should be its additional rent and at what rate?

3. The Assistant Settlement Officer who dealt with the application made by the landlord u/s 105, Ben. Ten. Act, came to the conclusion on the materials before him regard being specially had to the kabuliyat Ex. B in the case, that the rent payable by the tenants in respect of the tenancy was consolidated rent and the landlord was not therefore entitled to get additional rent for additional area as claimed by him in the application u/s 105, Ben. Ten. Act. On appeal by the landlord the decision, of the Assistant Settlement Officer was reversed, by the learned Special Judge, 24 Parganas. The learned Judge came to a decision that the application of the landlord, so far as it was in regard to additional rent for additional area, should be allowed, in view of the provisions contained in Section 52, Ben. Ten. Act. The learned Judge in his judgment construed the kabuliyat in question, Ex. 2 in the case, to which reference has been made. The kabuliyat has been placed before us for our consideration, and it appears to us that the Assistant Settlement Officer was right in holding that the rent mentioned in the kabuliyat was consolidated rent, and there could not be any application of the provision contained in Section 52, Ben. Ten. Act, in respect of the tenancy which

was created by the kabuliyat Ex. 2 in the case. On a careful consideration of the terms of the kabuliyat we have come to the conclusion that the rent payable by the tenants was not enhancible on any ground whatsoever and in that view of the matter the landlord's claim for enhancement on the ground of increase in area should have been disallowed by the learned Judge in the Court of appeal, below.

4. We are clearly of opinion that on a proper construction of the kabuliyat the rent reserved was an entire rent for all the lands within certain specified boundaries. The statement of the area, and the rate per bigha as mentioned in the kabuliyat must be taken along with the other parts of the document. The area mentioned in the document must be held as such, to be a false description, regard being specially had to the definite stipulation contained in the kabuliyat that there should be no enhancement on any ground whatsoever. In the above view of the case this appeal must be allowed. The decision and the decree passed by the Court of appeal below must be set aside. In our judgment the decision come to by the Assistant Settlement Officer in the case was the correct decision governing the rights of the parties in the matter of payment of rent by the tenants to the landlord. The decision, of the learned Special Judge in set aside and that of the Assistant Settlement Officer is restored and affirmed.

5. In the result this appeal is allowed. The appellants in this Court are entitled to their costs throughout, including the costs in this appeal. The hearing fee in this appeal is assessed at two gold mohurs.