

(1898) 01 CAL CK 0022
In the Calcutta High Court

Mothura Mohun Lahiri and Others

APPELLANT

Vs

Mati Sarkar and Others

RESPONDENT

Date of Decision : 31-01-1898

Acts Referred:

Bengal Tenancy Act, 1885 — Section 27, 29

Citation : (1898) ILR (Cal) 781

Hon'ble Judges : Wilkins, J; Ghose, J

Bench : Division Bench

Judgement

Ghose and Wilkins, JJ.—This appeal arises out of a suit for rent at the rate of Rs. 103 per year, upon a kabuliat executed by the defendant in the year 1893. The defendant pleaded that the kabuliat was not a bond fide transaction, but was the result of coercion exercised by the plaintiff and that the rent payable was Rs. 39-3 a year.

2. The Munsif, among other issues, laid down the following

(1) Whether the kabuliat was illegally and forcibly extorted from the defendant?

(2) At what rate should the plaintiff recover rent?

3. It transpired in the course of the trial that the rent of the defendant's holding had been once enhanced in the year 1292 (B.S.); and that there was a further enhancement in the year 1893 by the kabuliat executed by the defendant. The defendant, however, admitted in his deposition that he had been paying for some years at the rate of Rs. 50.

4. We should here mention that, in the course of argument before the Munsif, the plaintiff stated that the increased jumma mentioned in the kabuliat was due to increased area found in the occupation of the defendant, and urged that, inasmuch as the defendant in his written statement did not raise any defence as to alteration of rate of rent and area, he, the plaintiff, did not place before the Court all the evidence which was available explaining the circumstances under

which the defendant, agreed to pay the rent as mentioned in the kabuliat. The Munsif, however, disallowed this plea upon the ground that the issue having been raised as to what jumma the plaintiff was entitled to recover, he should determine upon the evidence adduced whether the enhanced jumma, as mentioned in the kabuliat, was really due to increased area, or increased rate, or both.

5. The Munsif held that the kabuliat had not been extorted from the defendant as it was pleaded, and that the rent agreed to be paid under the kabuliat was partly increased rent on account of the excess area found in the occupation of the defendant, and partly enhanced rent, and in excess of the rent then payable by the defendant. He accordingly gave a decree for such increased rent plus the rent then payable by the defendant, i.e., Rs. 50 with an enhancement upon it at the rate of two-annas in the rupee.

6. On appeal by the defendant, the District Judge has held that there having been an enhancement in the year 1292, the plaintiff is not entitled to any enhancement within fifteen years from that time; that the Munsif was not, therefore, right in allowing an enhancement at the rate of two-annas upon the rupee; and that the case does not fall within the proviso (1) to Section 29 of the Bengal Tenancy Act. He has further held that it is not proved that the enhancement as mentioned in the kabuliat was increased rent owing to increase of area. He has accordingly given the plaintiff a decree at the rate admitted by the defendant in his written statement.

7. Against this decree the plaintiff has preferred this second appeal.

8. The first question that has been raised before us for consideration is, what may be the legal effect of the enhancement in the year 1292 (B.S.) as bearing upon the kabuliat executed by the defendant in 1893.

9. It is not clear upon this record whether the enhancement in the year 1292 (B.S.) was before or after the promulgation of the Bengal Tenancy Act. Assuming, in the first instance, that it was before the Act came into operation let us examine how does the matter stand.

10. Section 29 of that Act provides (omitting the 2nd and 3rd provisos which have no bearing in this case): "The money rent of an occupancy raiyat may be enhanced by contract, subject to the following conditions: (a) the contract must be in writing and registered; (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat; (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract.

11. "Provided as follows: (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed."

12. When the section says that the money rent may be enhanced by contract in writing and registered, it evidently means to refer to enhancement after the promulgation of the Bengal Tenancy Act: it does not refer to any enhancement which has already taken place. Under the old law, it was not necessary that the contract should be "in writing and registered"; it could be made orally. The contract by which rent was enhanced in the year 1292 (B.S.) does not, therefore, fall within Section 29; and it follows that that contract was no bar to an enhancement during the period of fifteen years from the date thereof, as contemplated by Clause (c) of the section.

13. In this view of the matter, it seems to us that the contract (as evidenced by the kabuliat) under which the defendant agreed to a further enhancement, though it is a contract falling within Section 29 of the Act (it having been entered into after the Bengal Tenancy Act came into force), could not be rejected upon the ground adopted by the District Judge. But then Clause (b) of the section enjoins that the rent payable by a raiyat must not be enhanced so as to exceed by more than two annas in the rupee. The rent agreed to be paid under the kabuliat of 1893 was certainly more than the limit prescribed by the section; and it, therefore, follows that the kabuliat is bad in law, if the rent then agreed to be paid was enhanced rent.

14. But supposing, on the other hand, that the enhancement of 1292 (B.S.) was effected after the Bengal Tenancy Act came into operation, let us examine what may be the relative rights of the parties.

15. What Section 29 of the Act evidently contemplates is that when the rent of an occupancy raiyat is enhanced after the promulgation thereof it must be, in order to make the contract effectual and binding, in writing; and the document must be registered. The contract by which the rent was enhanced in 1292 B.S., if it was after the Act came into force, and being only an oral contract, was not and is not effectual and binding upon the defendant. It may, therefore, be left out of consideration. If it be so left out, the provisions of Clause (c) of Section 29 would not operate so as to debar the plaintiff from claiming enhancement in the year 1893. But then, having regard to Clause (b) of the section, the rent could not be enhanced so as to exceed by more than two-annas in the rupee the rent previously payable. It is unquestioned that the enhancement made in the year 1893 was far above the limit prescribed by Clause (b) and that being so the kabuliat is bad in law if the rent then agreed to be paid was enhanced rent.

16. But it has been contended before us that, having regard to the defence raised in the written statement, the issue framed by the Munsif as to what the jamma was which the plaintiff was entitled to recover in this case, was not clear enough, so as to call upon the plaintiff to adduce evidence upon the question whether the rent mentioned in the kabuliat was enhanced rent, or it was but increased rent assessed upon the increased area found in the occupation of the defendant. We think that the contention of the appellant in this respect is correct. The Munsif practically admitted it to be so, but yet he examined the

evidence such as it was upon the record, and found that the rent stated in the kabuliat was partly increased rent and partly enhanced rent. The learned Judge, however, has upon the same evidence arrived at a conclusion wholly adverse to the plaintiff.

17. In the view that we have just expressed, we think that the plaintiff is entitled to a remand for the purpose of enabling him to adduce evidence upon the question, whether the rent agreed to be paid under the kabuliat was increased rent with reference to the increased area in the occupation of the defendant. If this question be found against him, the claim for rent at the rate of Rs. 103 must be disallowed, otherwise it should be allowed.

18. We should here state that, supposing it be found that the said rent is partly enhanced and partly increased rent, as it was held by the Munsif, the plaintiff would not be entitled to recover the increased rent as was allowed by that officer; for the contract as evidenced by the kabuliat could not be divided into two parts, one part referable to a valid transaction, and the other part to an invalid transaction. See in this connection the ease of *Kristo Dhone Ghose v. Brojo Govindo Roy* (1897) ILR 24 Cal. 895.

19. There is one other matter which arises in this appeal, and that is with reference to the admission of the defendant in his deposition as to the rent he has been paying for some years, i.e., for more than three years. He admits this rent to be Rs. 50, and having regard to proviso (1) of Section 29, as also the provisions of Section 27 of the Act, we think that there is no reason why the plaintiff should not, at any rate, i.e., failing the kabuliat, recover rent at the rate of Rs. 50 as admitted by the defendant.

20. We accordingly set aside the decrees of both the Courts below, and send the case back for retrial upon the question which we have already referred to, and with reference to the observations we have just made, costs to abide the result.

21. The judgment that we have just delivered will be applicable to appeals Nos. 1119, 1120, 1121 and 1124 of 1896.

22. No. 1116.---The judgment that we have delivered in appeal No. 1082 is also applicable to this appeal, with this exception, that the defendant in this case has made no admission in his deposition on oath that he had been paying any higher rent than that which is stated in his written statement, and, therefore, the observations that we have made in appeal No. 1082 as regards the effect of the admission of the defendant in that case are not applicable here. The case will, however, be remanded for retrial with reference to the other remarks that we have made in that case. The judgment in this appeal will be applicable to appeals Nos. 1117, 1118 and 1122 of 1896. These cases will also be remanded for retrial and the costs will abide the result.