

**(1920) 02 CAL CK 0021**  
**In the Calcutta High Court**

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|----------------------------------------|------------|
| Mukbusor Rahaman Chowdhury and Another | APPELLANT  |
| Vs                                     |            |
| Raj Lakhi Debya and Another            | RESPONDENT |

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**Date of Decision :** 27-02-1920

**Acts Referred:**

**Citation :** AIR 1921 Cal 789 : 81 Ind. Cas. 744

**Hon'ble Judges :** Syed Shamsul Huda, J;Richardson, J

**Bench :** Division Bench

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## Judgement

1. This is an appeal from the judgment and decree of the Subordinate Judge of Chittagong, dated 21st May, 1918, in a suit brought by the plaintiffs for the ejectment of the defendants from certain alluvial land. In the plaint as it originally stood there was an alternative prayer for the assessment of a fair and equitable rent in respect of the land But with the leave of the Court that prayer was subsequent withdrawn. The prayer for ejectment has been allowed and the appellants before us are the defendants.

2. The plaintiffs are wards of the Court of Wards suing by their next friend, the General Manager, Court of Wards, Chittagong. The defendants were tenants of the plaintiffs under a patta dated the 26th March, 1906. The learned Subordinate Judge has held and in the result we shall agree with him--that the patta created a term of ten years on the expiry of which the plaintiffs had the option of evicting the defendants. The defendants contend that the patta entitles them to permanent rights of occupation or occupancy subject to a revision of the rent at the end of the first ten years, and thereafter from time to time as the parties might agree, or in default of agreement, in accordance with the provisions of the rent law.

3. The area covered by the patta measures more than 45 drones or about 800 bighas. Learned Counsel for the defendants began by referring to an amalnama of the year 1204. That document, however, refers to a schedule, and when we asked for the schedule, it was not forthcoming. He next produced an extract from maghi chitta of 1839 which was not produced in the Court below and which we

could not admit in evidence. The value of the extract depends on the identity of the land to which the extract relates with the patta land as in the case of the amalnama, the identity is not apparent on the face of the document and is not established by evidence. Moreover the Maghi Chitta of 1839 is well-known in Chittagong, and if the extract is relevant, it should have been exhibited in the Trial Court.

4. We must take it that the defendants obtained possession under a grazing lease of 1881 for a term of five years (kabuliyat Exhibit XI) and that after the expiry of the term they held over as tenants from year to year. The kabuliyat was executed as it states "without reference to our previous rights," meaning, as we understand the phrase, that the defendants did not insist on any previous-rights and were content with the rights then conferred. In 1902 the defendants were served with a notice to quit and in 1903 a suit was instituted to evict them in which a decree for eviction was made on 22nd August, 1904, The defendants' appeal to the High Court was dismissed for default on the 30th November, 1905. On the 7th February and again on the 17th February, 1906, the defendants filed petitions praying for settlement of the chur with them. On that the General Manager wrote a letter to the Collector dated 28th February, 1906. The history of the land is set out. The expense of erecting the embankments necessary to make the land fit for cultivation is mentioned, an expense which in the then condition of its finances the wards' estate was not immediately able to meet. In the circumstances he proposed that a settlement for ten years should be given to the defendants on the following terms and conditions:

5. (a) That the defendants should pay rent at a progressive rate, Rs. 2-8 per shahi kani for the first three years, and for the balance of the term at the rate of Rs. 5-8 per shahi kani.

6. (b) That the defendants should withdraw their appeal to the High Court. (Apparently it was not known to the local officers of the Court of Wards that the appeal had already been dismissed and the defendants did not enlighten them.)

7. (c) That the defendants should construct the required embankments and maintain them at their own expense.

8. The letter further states that the defendants had agreed to the above terms and a memorandum is exhibited (Exhibit II) headed "Terms of the Settlement ten years--from 1313 to 1322 B.S." and containing a table of the progressive rates of rent. On this document there is an endorsement, "I agree to progressive rents shown above" with the signature below of Maqbul Ahmed, one of the defendants.

9. The Collector reported the proposal to the Commissioner for sanction, and the Commissioner by his letter dated the 16th March, 1906, accorded his sanction on the terms suggested by the General Manager which are set out in full.

10. The patta now in question was then executed.

11. It purports to follow the Board's form No. 2 and is headed "Form of patta for

aiyats known to have right of occupancy."

12. Clause 3 on which the defendants build their case runs as follows:

3. That you shall acquire a right of occupancy in respect of the present land and the said estate has no power either to dispossess you from this land at will or to enhance the rent therefor without having recourse to the law relating to enhancement of rent of land...That all these rights and privileges stated in this patta to vest in you, will after your death vest in your heirs.

13. Clause 4 continues:

14. 4. "That you will pay the jama which is fixed for ten years from 1313 B.S. to 1322 B.S. for the said land at a progressive rate, mentioned below, according to the kistibandi stated below." The clause then provides penalties for default in payment of rent. The penalties do not include the right of re-entry.

15. Clause 5 provides *inter alia* "that you will construct at your own cost katis and godhas (embankments) on all four sides of the land in order to keep off salt water and increase the productive powers of the land. That if owing to your failure to construct katis and godhas, the productive powers of land diminish, then you will make compensation to the estate for the loss occasioned thereby."

16. Clause 6 provides for waste and makes the holding non-transferable without the Collector's permission.

17. The lease is in manuscript. It cannot be said, therefore, that the local officers committed the common mistake of using a wrong printed form. It can hardly be doubted however, that they were guilty of the analogous mistake of adopting a common form, inappropriate to the relationship which it was intended to create. It is improbable, having regard to the area of the land, the class to which the defendants belong and other circumstances that the defendants could be regarded as "raiyaats". But, however, that may be we agree with the Subordinate Judge, that the local officers having the Commissioner's letter before them had no power to confer on the defendants permanent rights of any kind.

18. Clause 2 of the patta recites the history of the antecedent litigation and mentions that the defendants were to "desist from prosecuting" their appeal to the High Court. It also incorporates the Commissioner's letter by reference. There can be no doubt, therefore, firstly, that the patta must be constructed consistently with the terms stated in that letter and secondly that the local officers were not authorised to grant a term of more than ten years and had no power to do so.

19. In our opinion so far as the lease purports to confer permanent rights or to create a term exceeding ten years, it is void as against the plaintiffs, or voidable at their instance, for excess.

20. The suggestion that the defendants are entitled to compensation for improvements cannot be entertained for the reason given by the Subordinate

Judge, that the defendants undertook to construct embankments and bring the land under cultivation as part of their contract in consideration of the favourable terms on which the lease was granted.

21. It is said that the defendants made payments on account of rent after the termination of the ten years. But the three sums tendered were only provisionally accepted by the General Manager. In each case the manager made an order to the effect following:

The term of the raiyati having expired, the amount sent by this money is kept in deposit in favour of fresh, settlement.

22. Nothing turns on the description of the term as a raiyati term nor on the conditional acceptance of the money in case the defendants should succeed in securing a fresh settlement. There was no election by the General Manager, even assuming he had such power, to treat the defendants as tenants.

23. In the result the appeal fails and is dismissed with costs.