

(1926) 11 PAT CK 0007
In the Patna High Court

Musammat Bibi Sayedatulnissa and Others

APPELLANT

Vs

Amrit Mahto and Others

RESPONDENT

Date of Decision : 01-11-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 27, 35

Citation : AIR 1927 Patna 144 : 100 Ind. Cas. 754

Hon'ble Judges : Ross, J;Kulwant Sahay, J

Bench : Division Bench

Judgement

Ross, J.—These appeals arise out of suits for enhancement of rent. The learned Munsif decreed enhancement at the rate of 3-annas 6-pies in the rupee. He came to the conclusion that the increase in the price of makai came to 4-annas and 5 dams in the rupee and of paddy to 3-annas 10 dams in the rupee. It was pointed out before the learned District Judge that this was a miscalculation; that the enhancement for paddy land should, on the figures, be 4-annas 7-pies in the rupee; and that consequently the landlord was entitled to an all round enhancement at the rate of 4 annas 6-pies in the rupee. But the learned District Judge applying Section 35 of the Bengal Tenancy Act, held that in the circumstances of these cases no enhancement at all should be allowed. He stated the principle thus:

In order to determine whether in any particular case an enhancement would be unfair or inadequate, it is always necessary to compare the present incidence of the rent with the average outturn of the land and there is no other way of determining the fairness of a rent.

2. Learned Counsel on behalf of the landlord who is the appellant contends that this proposition is too widely stated; that u/s 27 of the Bengal Tenancy Act the existing rent is to be presumed to be fair; and, if the price of the staple food crops has risen, the landlord is entitled to a corresponding enhancement of rent. In my opinion Section 35 does not bear the interpretation that the learned Judge has put upon it. When the rise in prices has been established, there ought, in the

absence of special circumstances, to be a corresponding increase in the rent. The ground upon which the learned Judge has proceeded is that the existing rent which approximates to one-third of the gross produce is very high. And this opinion is entitled to every respect. But the conclusion has been arrived at on the basis that the land produced only rabi at the rate of 5 maunds a bigha. One of the objections raised by the tenants was that the landlord had neglected gilandai; but this in itself would not be a ground for refusing an enhancement of cash rent. The learned Munsif held that the evidence of the defendants that only rabi crops were produced was falsified by their own witnesses. He referred to the village note which showed that the lands of this village are held at a rental of Rs. 6 to Rs. 10 a bigha and as these defendants mostly hold land at the rental of Rs. 6 a bigha, he thought that the existing rent was low. His opinion was, therefore, diametrically opposed to that of the learned District Judge; and it seems to me that the grounds of the judgment of the learned Munsif have not been altogether met by the Appellate Court. The evidence has been referred to; the learned District Judge has mentioned the partial admission of the defence witness No. 1, but it appears that three witnesses at least admitted that some paddy is still grown on the land. The evidence about the growing of paddy is contradictory, some witnesses saying that no paddy was sown while others said that paddy was still sown but was washed away. The evidence of two of the witnesses was that there had been no decrease in the produce of the land; from the evidence of defence witness No. 4 it appears that he had taken land at the rate of Rs. 50 a bigha but at present the lands are given on ijara at the rate of Rs. 100 a bigha; and this would indicate anything but a decrease in the productivity of the land. With regard to the rabi produce the learned District Judge refers to the admission of the defendants that this is between 2 and 5 maunds a bigha and he has accepted 5 maunds as the outturn. But he thinks that the figures given by the defendants' witnesses are under-stated although he says that they are not under-stated to a greater extent than the figures given by the Patwari are over-stated. These figures are: paddy at 17 to 18 maunds a bigha and paira khesari at 9 to 10 maunds a bigha and, if all that can be said for the defence evidence is that the under-statement by the tenants is no greater than the overstatement by the Patwari, the outturn of rabi should not be taken at the rate of 5 maunds a bigha. On the finding that the defence has under-estimated the produce, the finding of the District Judge as to the rate of rent based upon the defence evidence cannot be maintained. It is clear, therefore, that some enhancement in these cases ought to have been allowed, and the question is, what the enhancement ought to be. Learned Counsel for the appellant, while contending that he is entitled to 4 annas 6-pies in the rupee, is prepared, as a matter of concession to the tenants and for the sake of good-will, to accept 3-annas in the rupee. I think that this rate is fair except in the cases of Suits Nos. 597 and 598 where the rental at present is Rs. 7-15 0 and Rs. 6 15-0 respectively. In these cases the enhancement should be at the rate of 2 annas in the rupee.

3. The result is that the appeals are decreed to this extent that in all the suits

except Nos. 597 and 598 the enhancement will be at the rate of 3-annas in the rupee and in these two suits only at the rate of 2-annas in the rupee. The appellants are entitled to their costs. We assess the hearing-fee at Rs. 105 which will be equally divided between the defendants.

4. The cross-objection is dismissed.

Kulwant Sahay, J.

5. I agree.