

(1917) 08 CAL CK 0061
In the Calcutta High Court

Natibulla Akanda and Others

APPELLANT

Vs

Badi (Badiulla in vakalatnamah) Bepari

RESPONDENT

Date of Decision : 15-08-1917

Acts Referred:

Citation : 42 Ind. Cas. 243

Hon'ble Judges : Teunon, J; Shamsul Huda, J

Bench : Division Bench

Judgement

1. This is an appeal by the tenants defendants in a suit for rent. It is conceded that the plaintiff-landlord is a raiyat. It is also conceded that the defendants-appellants are under-raiyats. It is farther conceded that the defendants under-raiyats are holding under & registered lease. The holding, it appears, measures 15 bighas of land. The portion sub-let to the tenants-defendants measures 7 bighas. The rent payable by the raiyat for his 15 bighas of land is Rs. 6-14-0. In respect of the 7 bighas he elaims from the tenants-defendants at the rate of Rs. 27-8-0.

2. The appellants contend that by virtue of the provision of Section 48 of the Bengal Tenancy Act the utmost that the plaintiff raiyat is entitled to recover is rent at the rate of Rs. 6-14-0 plus 50 per cent., that is to say, Rs. 10 5-0. In the Trial Court rent was decreed at that rate. But on appeal the District Judge on the strength of the case of Nim Ghand Shaha v. Joy Chandra Nath (1) held that Section 48 of the Bengal Tenancy Act has no application where only a portion of the holding is sublet and he, therefore, decreed the suit for rent at the rate claimed. The tenants-appellants do not contend before us that they should pay at a lesser rate than the rate decreed by the Munsif, that is to say, they ask us to proceed on the assumption that the 7 bighas sub let to. them is the only profit-yielding part of the holding to take the whole of the annual rent payable by the raiyat, add to it 50 per cent, and determine that to be the rent payable to him.

3. It appears to us that in applying the case reported as Nim Chand Shaha v. Joy Chandra Nath (1) to a case such as this the learned District Judge has fallen into

an error, and to hold that Section 48 applies and can be applied only where the whole of the raiyat's holding is sub-let would be to defeat the policy and intention of the Legislature. In the case cited, as a matter of fact the rent for the whole holding was Rs. 21-4-0. The plaintiff claimed in respect of the portion sub let a rent of Rs. 14. To have applied in that case the principle for which the appellants before us now contend would have been to decree a rent higher than the rent claimed. Here that is not so, and in a case such as the present we think that the provisions of Section 48 of the Bengal Tenancy Act can clearly be applied and that the annual rent for which the defendants-appellants contend is the maximum which the landlord is entitled to claim. Whether in fact on a strict application of Section 48 a lesser rent might not have been arrived at is a question into which we need not enter.

4. In this view we set aside the decree of the District Judge and restore the decree of the Trial Court with proportionate costs in all Courts.