

(1919) 03 CAL CK 0061
In the Calcutta High Court

Parafulla Narain Majumdar

APPELLANT

Vs

Palku (Pulku In vakalatnamah) Mahammad

RESPONDENT

Date of Decision : 21-03-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 104A, 104J

Citation : AIR 1919 Cal 77(2) : 53 Ind. Cas. 122

Hon'ble Judges : Ernest Fletcher, J;Cumming, J

Bench : Division Bench

Judgement

Fletcher, J.—These two appeals are preferred against the decision of the learned Officiating Subordinate Judge of Dinajpore, reversing the decision of the officiating second Munsif at Jalpaiguri. There were two suits for rent brought for two holdings, one at the rate of Rs. 50 and the other at the rate of Rs. 30-10-0 per annum. What has been found as a fact is this: That there never is or never was a jama of Rs. 50 and that there is not a jama of Rs. 30-10-0. The true facts are these: There was a jama of Rs, 30-10-0. But settlement proceedings had taken place in the estate" which was a Government khas Mahal, and the settlement rent roll prepared under the provisions of Sections 104A to 104F of the Bengal Tenancy Act had been incorporated in the Record of Rights finally published. Therefore, under the provisions of Section 104J of the Bengal Tenancy Act, no evidence could be given to show that the rent appearing in that Record of Rights was not fair and equitable. It is said, however that the defendant holds under the plaintiff another holding of Rs. 50 which does not appear on the Record of Rights. That is a highly improbable story and it was not believed by the lower Appellate Court, and it is not at all probable that one of the jamas under the plaintiff has been omitted from the Record of Rights. Therefore, we must take it as found as a fact that the defendant holds under the plaintiff one holding of which the rent has been settled under the provisions of the Bengal Tenancy Act at Rs. 51. The point made is this: That, after the publication of the Record of Rights, the plaintiff obtained an ex parte decree for rent against the defendant. It is quite dear that in that case the Record of Rights could not have been before

the Court and, of course, that ex parte decree being a judicial decision and not set aside, there is an estoppel that at the date of that decree, the relationship of landlord and tenant as established by that decree was subsisting between the parties. The view of the plaintiff is this. That the Court is bound to presume that that condition of things subsisted at the time of the present suits. The learned Judge, finding that there was this error and that the decree had been obviously obtained by keeping back the Record of Rights, held that he was not bound to presume, though he might presume according to the terms of the Indian Evidence Act, and he said that he would not presume because the Record of Rights showed quite clearly that the rent at which the defendant held under the plaintiff was different to that which was mentioned in the ex parte decree. I think he was right. Section 104J precludes any evidence from being given to contradict the statement as to the rent mentioned in the Record of Rights where a settlement rent roll has been prepared under the provisions of Sections 104A to 104F. If that is so, it does not matter whether the evidence to be given is in writing or by matters of record or otherwise. The provisions of the Statute are conclusive that no evidence can be given to contradict matters which fall within Section 104J, If that is so, it is quite clear that the learned Judge arrived at a correct conclusion. All the merits are on that side. A party ought not, because he obtained an ex parte decree by keeping back the record, to be entitled for all time to get rent at a rate other than that which is provided for by the Bengal Tenancy Act. There is no reason to disturb the conclusion arrived at by the learned Judge of the lower Appellate Court. The present appeals, therefore, fail and must be dismissed. The appellant must pay to the respondent his costs in these appeals.

Coming, J.

2. I agree.