

(1948) 09 CAL CK 0016
In the Calcutta High Court
Case No : A.F.A.D. No. 1309 of 1944

Radhagovinda Roy and Others

APPELLANT

Vs

Narayan Dhoba

RESPONDENT

Date of Decision : 02-09-1948

Acts Referred:

Bengal Tenancy Act, 1885 — Section 29, 75A

Citation : AIR 1952 Cal 287

Hon'ble Judges : Das Gupta, J

Bench : Single Bench

Advocate : Jagadis Chandra Ghose, for the Appellant; Apurbadhan Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Das Gupta, J.—The rent of the defendant tenant recorded in the settlement Khatian was Rs. 18/-. The plaintiffs claimed Rs. 20/- as rent. The learned Court below has found that the rent of Rs. 20/- was being realised from 1336 or 1337 B. Section, but held that the provisions relating to enhancement of rent having been suspended by Section 75A of the Bengal Tenancy Act, the landlord is not entitled to get rent at the rate of Rs. 20/-but can realise only at the rate of Rs. 18/-.

2. The only contention in appeal is that Section 75A does not hit the proviso to Section 29 of the Bengal Tenancy Act. The decision of this turns on the question whether the proviso to Section 29 can be read as a provision relating not to enhancement of rent. What the Section 29 does provide is that the money rent of an occupancy "raiyat" may be enhanced by contract. It then goes on to put in certain conditions, and thereafter proceeds to say that in certain cases these conditions will not operate. The net result of this proviso, therefore, is where the special circumstances mentioned in the proviso exist, the money rent of an occupancy "raiyat" may be enhanced by contract without being subject to the conditions. Clearly, therefore, the proviso cannot be read as a provision not

relating to enhancement of rent.

3. It has been argued, however, by the learned Advocate for the appellants that the enhancement of rent by contract took place long before Section 75A of the Bengal Tenancy Act was enacted, and Section 75A has no retrospective operation prior to the 27th August 1937. His argument is that the enhancement of rent which has already taken place will not be affected thereby. The position, however, is that in spite of the enhancement of rent by contract having taken place several years ago, it could not be enforceable ordinarily because the condition (a) of Section 29 of the Bengal Tenancy Act was not observed. That difficulty would disappear as soon as it was found that for not less than three years immediately preceding the period for which rent was claimed, rent at the rate claimed has actually been paid. I do not, therefore, see how the mere fact that the enhancement of rent by contract took place earlier than the 27th August 1937, can help the appellants. It seems to me that before the landlord can realise at the rate of Rs. 20/-, he has to show that the rent of the occupancy "raiyat" can be enhanced by contract. It can certainly be done in certain circumstances, but before the landlord succeeds in showing that he can realise rent at enhanced rate, it is necessary for him in this case to bring into operation the proviso to Section 29 of the Bengal Tenancy Act. As I have already said, the proviso cannot be read as not relating to enhancement of rent. In my opinion, therefore, the learned Court below has rightly held that the landlord cannot in view of Section 75A of the Bengal Tenancy Act realise rent at the rate of Rs. 20/-.

4. This appeal is, therefore, dismissed with costs.