

**(1921) 05 CAL CK 0002**

**In the Calcutta High Court**

**Case No :** Appeal from Appellate Decree No. 2449 of 1919

Raj Kumari Bose Choudhurani

APPELLANT

Vs

Surendra Nath Guha Choudhuri

RESPONDENT

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**Date of Decision :** 06-05-1921

**Acts Referred:**

**Citation :** (1921) 05 CAL CK 0002

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## **Judgement**

1. This appeal arises out of a suit for rent. The defence was that the Defendant was dispossessed of three out of seven villages which form the subject-matter of the tenancy and that therefore there should be suspension of rent. The Courts below have found that the Defendants failed to prove any dispossession and have disallowed the plea of sus-pension of rent.

2. The Defendant has appealed to this Court.

3. The learned Subordinate Judge observes as follows:- "The two pottas by which the two tenancies were created no doubt show that lands of seven mauzas were let out. Defendant also files some dakhilas to show that they were granted by the landlord for seven mauzas. But in the settlement khewats one under-tenancy in Baishari, and one under-tenancy in Uttarkul and two under-tenancies in Iluhar had not been recorded under the tenancies in arrears. The settlement authorities refused to record these under-tenancies under the Defendant's tenancies notwithstanding the prayer on Defendant's behalf."

4. The mere fact that the settlement authorities did not record the under-tenancies as being included in the Defendant's tenancies cannot affect the right of the latter if as a matter of fact they formed the subject-matter of the lease.

5. Then again, the learned Subordinate Judge says : " In order to entitle the Defendant to suspension of rent, she must first prove that she was in possession and secondly that the Plaintiff had dispossessed her."

6. So far as the question of possession and dispossession is concerned, it must be taken now after the findings of the Courts below that the Defendant had

never been in possession nor had been dispossessed. If, however, all the seven mauzas were included in the lease as the pottas and dakhilas go to show, there does not appear to be any sufficient reason why the Defendant should not be entitled to all abatement of rent in respect of the mauzas of which she did not obtain possession.

7. It is contended by the learned Pleader; for the Respondent that it is not a fact that the seven mauzas in their entirety were let out to the Defendant, though portions thereof might have been let out. that Only three mauzas out of the seven claimed by the Defendant were let out in their entirety, that in any case the Plaintiff was not in possession of any land covered by the lease to the Defendant and that the Plaintiff himself (or through his tenants) was in possession of other lands in his own right, which were not covered by the lease.

8. The questions, therefore, for determination are whether the three mauza question in their entirety were let out to the Defendant. If not, whether an, lands of the said mauzas were so let out; and if so, whether the Plaintiff himself, or through his tenants, was in possession of such lands; in other words, whether the Plaintiff was in possession of any land let out to the Defendant. These questions do not appear to have been gone into by either of the Courts below.

9. It appears from the record that the leases were granted so far back as 1260, i.e., more than 60 years before the and although the question of limitation does not arise in connection with the plea of abatement, the question of acquiescence and the presumption arising from such acquiescence may arise [see the case of Ram Narain Chakrabarty v. Poolin Behari Lall Singh 2 C L. R. 5 (1878)]

10. It is contended, however, by the learned Pleader for the Appellant that even if such a presumption could be drawn from the fact of acquiescence for a long period, no such presumption can arise in the pre sent case because the landlord has been all along granting dakhilas for rent, in which all the seven manzas are expressly mentioned and this has continued up to the year 1311 which was within 12 years of the suit, and that in these circumstances, it was open to the Defendant to maintain a suit for recovery of possession of those mauzas on the strength of the acknowledgment in the dakhilas, even assuming that the Defendant had never been in possession before. These matters have not been considered by the Court below and in fact, neither of the Courts below has even referred to the fact that the leases were granted so far back as 1260. We think, in these circumstances, that the case should go back to the lower Appellate Court in order that the Court may consider all the questions mentioned above and dispose of the case according to law. Costs will abide the result.