

(1919) 07 CAL CK 0013
In the Calcutta High Court

Raja Kristo Das Law and Others

APPELLANT

Vs

Kalimuddin Bhuia and Others

RESPONDENT

Date of Decision : 25-07-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 179, 67

Citation : 55 Ind. Cas. 507

Hon'ble Judges : Syed Shamsul Huda, J

Bench : Single Bench

Judgement

Syed Shamsul Huda, J.

S.A. No. 1678 OF 1918

1. This appeal arises out of a suit for rent with interest at 2 per cent, per mensem. The liability for the rent was not denied by the tenants. No written statement was filed, and it was not necessary in such cases to file a written statement. The plaintiffs in their plaint alleged that the rent claimed was in respect of a shikmi kaimi taluk with a rent of 49 rupees payable per annum. The defendants on the day of hearing filed a petition, in which they stated that the claim for interest at the rate of 2 rupees per cent. per mensem, was an exorbitant and penal rate. There was no allegation that the Jama was not a permanent Jama. But in their plaint the plaintiffs also did not say anything as regards the fixity of rent. The Courts below have not based their decision on the question as to whether the rate of interest was or was not penal, and I doubt if on the authorities it could be held that the rate was a penal rate. But the decision is based on the provisions of Section 67 of the Bengal Tenancy Act and the Court below has, instead of interest, awarded damages to the plaintiffs at the rate of 25 per cent. Section 67 would only apply if the tenancy was not a permanent mokarari tenancy situated within a permanently settled area (Section 179, Bengal Tenancy Act).

2. It is argued on behalf of the appellants that upon a proper interpretation of

the kabuliyat exesuted by the tenants in this case it should be held that the tenancy was a permanent mokarari tenancy, The learned Vakil for the respondents, for obvious reasons does not want categorically to say that the lease hold interest of his clients is not permanent or that the rent is not a fixed rent. The document has been placed before me and, although there can be no doubt that a permanent tenancy was created, there are no clear expressions to show that the rent was fixed. But, reading this inference may be drawn from the tenor of the document as a whole and specially from the provision that if at any time the land on measurement is found to be larger in area than that on the basis of which the rent was fixed, the additional rent payable for such additional area would be in proportion to the rent originally fixed. I, therefore, hold that the lease was not only a permanent but also a mokarari lease.

3. In this view of the case I think the plaintiffs are entitled to the rate of interest claimed by them. The appeal is, therefore, allowed and the plaintiffs' suit decreed with costs in all the Courts.

4. This judgment will govern also Second Appeals Nos. 1773 and 2174 of 1918.