

(1920) 04 CAL CK 0033
In the Calcutta High Court

Raja Nirod Chandra Singh Sarma and Others

APPELLANT

Vs

Harihar Chakravarti Chowdhury and Others

RESPONDENT

Date of Decision : 28-04-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106
Letters Patent Act, 1865 — Clause 15

Citation : 58 Ind. Cas. 867

Hon'ble Judges : Asutosh Mookerjee, C.J.; Ernest Fletcher, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, C. J.

1. This is an appeal under Clause 15 of the Letters Patent from the judgment of Mr. Justice Pant on in a proceeding u/s 106 of the Bengal Tenancy Act for determination of the nature of a tenure.

2. The landlords, who are the appellants in this Court, alleged that the rent of the tenure was enhanceable; the tenants contended, on the other hand that the rent had been fixed in perpetuity. The Court of first instance decided in favour of the landlords and that view was accepted by the lower Appellate Court, On second appeal to this Court, Mr. Justice Panton has reversed the concurrent decisions of the Courts below, and has come to the conclusion that the rent of the tenure has been fixed in perpetuity.

3. In the interpretation of the contrast of tenancy, which has been placed before us and is dated the 31st August 1828, we must bear in mind the principle enunciated by the Judicial Committee in the case of *Bamasoondery Dassiah v. Radhika Chowdhra* 13 M.I.A. 248 : 4 B.L.R.P.C. 8 : 13 W.R.P.C. 11 : 2 S. P.C.J. 293 : 2 S. P.C.J. 524 : 20 E.R. 544, where Sir James W. Colville observed as follows: "A suit to enhance rents proceeds on the presumption that a Zamindar holding under the Perpetual Settlement has the right, from time to time, to raise the rents of all the rent-paying lands within his Zamindary according to the Pergunnah or current rate, unless either he is precluded from the exercise of that

right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognised by Bengal Regulation VIII of 1793; and it also assumes, that the defendant has some valid tenure or right of occupancy in the lands which are the subject of the suit."

4. In the case before us, it is not contended that the lands in question can be brought within one of the exemptions recognised by Bengal Regulation VIII of 1793. Consequently, the only point for consideration is, whether the Zemindar is precluded from the exercise of the right to enhance the rent of the tenure by a contract binding on him.

5. Reliance has been placed by the tenants on the use of the expression "patni taluk" in the contrast of tenancy, which, it has been argued on the authority of the decision in *Tarinee Churn Gangooly v. Watson and Co.* 12 W.R. 413 : 3 B.L.R. 437 *prima facie* imports a hereditary tenure. But that is not sufficient to support the ease of the respondents, who urge that the tenure is not merely hereditary but is held on a rent fixed in perpetuity. We cannot overlook in this connection that it was conceded in the Court of first instance that the document does not create a paint taluk in the technical sense of that expression as used in Regulation VIII of 1819. On behalf of the respondents, an endeavour has been made to resile from that position in this Court. But it is perfectly plain that this document does not create a paint taluk; in other words, a taluk subject to the summary procedure for realisation of rent provided by Regulation VIII of 1819. We have, then, two other clauses in the document which bear upon the question now under consideration. In one Clause, it is stated that "on account of this" (i.e., the land described) "I" (the tenant) "shall pay the annual rent of Rs. 173-8as.-12 gds. year by year and month by month as per Dowl in the khas taluk." The other clause is that, "I shall continue to be in enjoyment down to my sons, grandsons, etc., on receipt of the talukdari rents according to custom, on account of tank?, bheris, etc., lying in the village." There can be no doubt, in our opinion, that, as shown by these clauses, the tenure was intended to be hereditary. But the mere fact that a tenure is hereditary does not show that the rent of the tenure has been fixed in perpetuity. In this document, although we find expressions which show that the tenure was maurasi, there is nothing to show that the tenure was intended to be mokurari.

6. Reliance has been placed on behalf of the tenants on the decision of the Judicial Committee in the case of *Port Canning and Land Improvement Co. Ltd. v. Katyani Debi* 53 Ind. Cas. 522 : 47 C. 280 : 24 C.W.N. 369 : 32 C.L.J. 1 : 37 M.L.J. 578 : 17 A.L.J. 1061 : 1 U.P.L.R. (P.C.) 91 : (1920) M.W.N. 160 : 11 L.W. 296 : 46 I.A. 279 : 22 Bom. L.R. 437 (P.C.), which, however, has no application to the circumstances of the present litigation. There the land was let out for purposes of reclamation; no rent was payable for some years from the commencement of the tenancy ; than there was a progressive scale of rent. The Judicial Committee held, confirming the view of this Court *Katyani Debi v. Port Canning and Land Improvement Co.* 25 Ind. Cas. 274 : 19 C.W.N. 56 that the

rent mentioned in the lease as the last in the series of the progressive rents was intended to be fixed in perpetuity. In the case before us, the tenants covenanted to pay an annual rent of Rs. 173-8as.-12 gds. There is no indication that this rent was fixed in perpetuity and would not be varied from time to time. Consequently, this document does not show that the landlord had precluded himself from the exercise of the right of enhancement, by a contract binding on him.

7. Reference has been made to a subsequent document, dated the 9th December 1852, which, in our opinion, is of no assistance to the respondents. It merely shows that the lands of the taluk had become patit, and the landlord consequently granted a temporary remission; there is an express statement that, after the expiry of the period of temporary remission, the original rent would be revived. Consequently, we are thrown back on the initial contract between the parties dated the 31st August 1823, and, on the interpretation of that contract, we have already held that it does not preclude the landlord from enhancing the rent.

8. Reference has also been made to the conduct of the parties. In our opinion, in a case of this description the evidence of conduct is not relevant. If the terms of the contract are ambiguous, the rights of the parties may be determined with reference to the conduct of the parties: *Hebbert v. Purchas* (1871) 3 P.C. 605 650 : 7 Moo. P.C. (N.S.) 468 : 40 L.J. Ecc. 33 : 19 W.R. 898 : 17 E.R. 177; but, in any case, where the terms of the contract are unambiguous, no evidence can be given of the conduct of the parties in contradiction to the terms of the contract: *North Eastern Railway Co. v. Hastings* (1900) A.C. 260 263 : 69 L.J. Ch. 516 : 82 L.T. 429 : 16 T.L.R. 325.

9. We feel no doubt that the Court of first instance took a correct view of the relative position of the parties in this case and its judgment was rightly affirmed by the Court of Appeal below. The result is that the appeal is allowed, the decree made by Mr. Justice Panton set aside and that of the Court of Appeal below restored with costs both here and before Mr. Justice Panton.

Fletcher, J.

10. I agree.