

(1912) 04 CAL CK 0083
In the Calcutta High Court

Ramanuj Mahanta

APPELLANT

Vs

The Midnapore Zemindary Co. Ltd.

RESPONDENT

Date of Decision : 12-04-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 158

Citation : 14 Ind. Cas. 729

Hon'ble Judges : Lawrence Jenkins, C.J;N. Chatterjea, J

Bench : Division Bench

Judgement

1. These appeals arise out of a proceeding u/s 158 of the Bengal Tenancy Act, and the only point, as the appeals have been presented to us by the learned Advocates on both sides, is whether the appellant before us is a tenure-holder or a ryot holding at fixed rates, and if a tenure-holder whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure. The case came in the first instance before a Subordinate Judge who decided that the present appellant was a ryot holding at fixed rates. On appeal to the District Judge, it was held that he was a tenure-holder and his rent was liable to enhancement. On second appeal, it was held by Mr. Justice Coxe that he was not in a position to interfere with the decision of the lower Appellate Court, though the inclination of his mind obviously was in favour of holding that the present appellant was not a tenure-holder but a ryot. From his judgment, the present appeals have been preferred.

2. We agree with Mr. Justice Coxe that the appellant before us must be taken to be a tenure-holder. He is one to whom the presumption for which provision is made in Sub-section (5) of Section 3 of the Bengal Tenancy Act applies, and we think there is no sufficient ground for us in second appeal to interfere with the conclusion of the lower Appellate Court that the presumption in favour of the present appellant being a tenure-holder has not been displaced by the contrary being shown. The only question then that remains is whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement. It has not

been suggested before us that he is not a permanent tenure-holder, and it is, therefore, unnecessary to discuss that point any further. The only contest is whether his rent is liable to enhancement. Now, the tenure is traced back at least to 1818 and it is possible that the benefit of Section 6 of the Bengal Tenancy Act might have been claimed in view of the decision in *Ananda Chandra v. Kunjo Behari Pal* 8 C.L.J. 177. But that point has not been made before us, so all we have to consider is whether the original tenure was not one in which the rent was not enhanceable. Our attention has been drawn to Exhibit D, which is admitted to embody the terms under which the tenure was held from 1848 and possibly before, and there is there a distinct provision, though it is omitted from the translation, to the effect that "there shall be no increase or diminution of the above rent," that is, the rent of Rs. 17 sicca. Though that was the rent then fixed and there was that provision in it, still as a result of litigation, and possibly to buy peace, the mohunt entered into an arrangement with the zemiridars that if they restored him to the rights to which he was entitled, he was quite willing to pay the rent of Rs. 108-13-12 gds. Apparently, that was the arrangement, and the question is whether this increased rent disturbed the provision against increase to which I have referred,—whether the tenancy was thenceforth a new one. Dr. Rash Behary Ghosh felt, and I think rightly felt, that he must contend that the holding was not on the old terms, that after that Solenama decree, there was a fresh start in all respects, and it is on that basis that he has addressed us. But there is a finding of the District Judge that the tenancy is identical with that granted to Hera Santal. But he thought it a sufficient answer to the contention that there should be no enhancement to say that Hera Santal's rent was Rs. 18 and that by compromise of 1883 the rent was raised to Rs. 103, and that a rental which had been once enhanced could be enhanced again. Dr. Ghosh candidly told us that he could not present to Court that line of argument and obviously he was well advised in that. If it be that the present tenancy is identical with that granted to Hera Santal, it was subject to that provision against increase, to which I have referred; and, the effect of the whole arrangement merely is that in place of Rs. 17 sicca. Rs. 108 is the rental, but subject to the same provisions as were contained in the original tenancy. This seems to have been recognised by the parties themselves, because there has been a long tenure from 1818 down to 1907 with this one single enhancement by mutual agreement and as the price of peace.

3. I am of opinion, therefore, the judgment of Mr. Justice Coxe must be modified, and we determine that the appellant before us is a permanent tenure-holder of the 435 bighas odd and that his rent of Rs. 108-13-12 gundas payable in respect thereof is not liable to enhancement during the continuance of his tenure. In respect of the other lands, we do not interfere with the judgments under appeal.

4. Each party will bear his own costs in the first Court and in the lower Appellate Court. The appellant is entitled to his costs in the High Court (one set of costs).