

(1924) 03 PAT CK 0008
In the Patna High Court

(Rani) Bhuneshwari Kuer @ Bacha Saheba	APPELLANT
Vs	
Sukhdeo Singh and Others	RESPONDENT

Date of Decision : 31-03-1924

Acts Referred:

Bengal Tenancy Act, 1885 — Section 69, 70, 71

Citation : AIR 1925 Patna 505

Hon'ble Judges : Kulwant Sahay, J;Jwala Prasad, J

Bench : Full Bench

Judgement

Jwala Prasad, J.—These appeals arise out of suits for recovery of bhaoli and nakdi rents which were tried together analogously and disposed of by the judgment of the Court below on the 10th January 1921. The landlord is the appellant in some of the cases and tenants in the others. The lands for which rents are claimed are situate in Mouza Srewa, Parganah Piara, District Gaya.

2. As to the nakdi rent there is no dispute. The points of difference between the parties have been:

(1) as to the system of paying the bhaoli rent; the tenants' case is that the system is batai (a division of crop between the landlord and the tenant), whereas the landlord's case is that the system is danabandi (appraisement);

(2) as to the proportionate share of the landlord in the produce; the tenants allege that the landlord's share is half, and the landlord, on the other hand, claims that her share is 9/16ths;

(3) as to whether the rent for sugarcane land is bhaoli or nakdi; the landlord says bhaoli and the tenants say nakdi; and

(4) as to the quantum of the produce in the years in suit

3. The Survey Record-of-Rights, which, as finally published on the 23rd November, 1916, shows that the system of payment of rent for the bhaoli lands is batai or division of produce of all kinds including sugar-canes, and the share of

the landlord therein is half.

4. The Court below has upheld the Survey entry as to the rent for the sugar-canes being bhaoli and as to the share of the landlord in sugar-canes as well as in other kinds produce being half. As to the system of payment of the rent, the learned Subordinate Judge has held that it is danabandi (i.e., appraisal) as opposed to batai (division) entered in the Survey Record-of-Rights. The suit is for the years 1324 to 1326, i.e., for the years just following the final publication of the Survey Record-of-Rights in 1323 (23rd November, 1916) which accentuated the dispute between the landlord and tenants as to the system being batai or danabandi.

5. The case of the tenants was that in the year 1324 the paddy crops were amicably divided between the landlord and the tenants, but the landlord refused to give receipt for the rent in kind payable to him. The landlord instituted proceedings before the Collector u/s 69 of the Bengal Tenancy Act for recovering her share in the produce by appraisal of the rabi crops for the year 1324. The tenants objected stating that the system was batai. On the 11th April the Sub-Divisional Officer considered the objection and held that the custom was of division as decided by the Settlement Authorities. Accordingly he directed an Amin to divide the crops. The landlord then did not want to proceed with the case and the raiyats were then asked whether they wanted to have the property divided, and, if so, to pay the cost of division. The raiyats then deposited the costs and the khasra was ultimately filed on the 12th June, 1917. Objection to that khasra was filed by the landlord on the 26th June 1917. On the 9th July the Sub-Divisional Officer held that the khasra does not show the actual produce of the field owing to the loss done by rains etc. As reported by the Amin the malik refused to take the hakimi share and the Amin sold the hakimi share according to the nirkhnama supplied by the Paraiya Police and deposited the sale-proceeds in the Treasury." This, however, was not a final disposal of the case under Sections 69 and 70 of the Bengal Tenancy Act. It appeared that the crops of some of these lands were already out. The tenants stated that it was so because the crops of those lands were divided between the landlord and the tenants. In these circumstances the Sub-Divisional Officer did not consider it desirable to institute proceeding u/s 71 of the Bengal Tenancy Act. Since then for the years 1325 and 1326 for the paddy and rabi crops proceedings under Sections 69 and 70, Bengal Tenancy Act were resorted to. The landlord was not satisfied with the result of those proceedings and she instituted the suits out of which these appeals have arisen.

6. The only question seriously raised in the appeals is as to the quantum of the produce in the years in suit. There has been no serious dispute and, as a matter of fact, the findings of the Settlement Authorities have been upheld by the Revenue Authorities under Sections 69 and 70 of the Bengal Tenancy Act as to the sugar cane being held at bhaoli rent and the landlord's share in the produce of all kinds being half. As regards the system of payment of rent, namely,

danabandi or batai the Court below has held that the system was danabandi and the landlord's share in the produce is half.

7. As to the quantum of the produce the Court below has disposed it of in the following words:

I find that both parties have made incorrect estimates. The plaintiff's men have over-estimated the crops while the tenants have under-estimated them. According to the evidence on plaintiff's side the average outturn of paddy varies between 15 to 35 maunds per bigha, that of rabi varies between 6 to 12 maunds a bigha and that of gur between 25 to 45 maunds per bigha. According to the evidence on the defendant's side the average outturn of paddy varies between 6 to 12 maunds that of rabi between 15 seers to 2 maunds and that of gur between 5 to 11 maunds per bigha. Taking the mean of the lowest figures of the malik and the highest figures of the tenants I find that the average outturn of paddy is 13½ maunds, that of rabi 4 maunds, and that of gur 18 maunds per bigha. So in the absence of any satisfactory evidence on the point I allow paddy, rabi and gur at the above rates for the years in suit. If any of these rates of outturn exceed the rates of outturn given in the plaint, then the plaint rates shall prevail.

8. Upon the bhaoli rent thus ascertained and the undisputed nakdi rent the Court below has given cess at annas six per rupee on the yearly jumma and damages at 12½ per cent. We have been taken through the evidence of the case relating to the outturn of the crops in the years in suit. The evidence has been very meagre and does not at all seem to be convincing. The feelings between the landlord and the tenants being very much strained owing to the dispute as to the appraisalment, it is not possible to believe that there was an estimate or appraisalment by the landlord of the crops in the actual charge of the tenants. The Court below was, therefore, perfectly right in not accepting the appraisalment papers or the estimates of the crops for the years in suit given on behalf of the landlord. The tenants were the last persons to give a correct idea of the actual produce, and consequently, their evidence also has been rightly rejected by the Court below.

9. On behalf of the respondents it is contended that the result of the rejection of the evidence both of the landlord and the tenants is that the plaintiff's claim should be decreed upon the admission made by the defendant in the written statement or in their evidence. This argument is based upon the assumption that the onus of proving the claim made in the plaint based on the estimate of the produce was on the landlord, and, if she failed to establish her claim, her suit could only be decreed upon the admissions, if any, made by the tenants. This is true so far as the ordinary principle of onus is concerned. Where the landlord has opportunity of appraising the crops and falsifies accounts in order to obtain a higher amount of rent he is not entitled to get any decree except on proof of the produce of the land, and if he fails to prove that, he must be content with the admissions made by the defendants. But where the landlord as in this case,

could not make an estimate of the crops or was prevented from doing so by the tenants, as held by the Court below it will be hard to throw out her claim, simply because she has not been able to prove the actual produce of the lands in the direct possession of the tenants. In the present case the dispute between the parties arose soon after the Record-of-Rights was prepared and published; and that dispute was upon the crucial point of the system for the payment of rent, danabandi or batai. It was not, therefore, possible for the landlord to make a true estimate of the crops in possession of the tenants and in fact she was prevented from doing so by the tenants. In such circumstances the tenants should not be permitted to take advantage of their own wrongful acts and their failure to disclose the true and proper produce of the lands in their actual possession. They had special means of knowledge and the onus of proving what was in their knowledge in such cases must rest upon them. Such has been the view taken by my learned brother in Rang Lal Singh v. Hani Bhuneshwari Kuer 1920 F.A. 141 to which I was a party. I adhere to it.

10. Therefore, in these cases the onus was not upon the landlord, and even if it was, in the circumstances of the case, it shifted upon the tenants to prove actual produce of the land. This principle so far as tenants and landlord are concerned is acknowledged in the statutory provision contained in Section 71(4) of the Bengal Tenancy Act which runs as follows:

11. "If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisal or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest." We have considered the evidence on the record, the village note, crop cutting estimates in the different proceedings, and the reports of the Amins, who went to divide the crop, and we are satisfied that the estimate made by the Court below for the years in suit is not challengeable. The recent commutation of rent also points to the same direction. The evidence as to produce being not satisfactory, the rate of rent fixed by commutation would afford a sure guide for estimating the yield of the land in suit. Those proceedings, though not on the record, were mentioned to us by both parties. As a matter of fact, the order in the commutation proceeding was also shown to us.

12. The next question is as to whether the yield of the lands in suit has been expressed by the Court below in its judgment dated 10th November, 1921, in kachha or pucca weights. The question arose in the Court below at the time of the preparation of the decree and the note appended by that Court in its judgment on the 24th January. 1922 shows that the kachha weight was meant. Mr. Sushil Madhab Mullick says that it should be pucca and not kachha. It, however, appears from a reference to the proceedings under Sections 69 and 70, Bengal Tenancy Act particularly Exhibit M-4, that the kachha weight was acted upon for the purpose of Sections 69 and 70 proceedings. The evidence of the plaintiff's witness No. 8, Ajodhya Singh, shows that the kachha weight was

prevalent in the village during the years in suit. It is admitted that the kachha weight was prevalent up to 1324 and that in 1325 pucca weight was for the first time introduced. The evidence as to the system of pucca weight having been fully brought into force in 1325 is not satisfactory.

13. I, therefore, agree with the view taken by the Court below expressed in the note to the judgment dated the 10th January, 1921 that kachha weight was meant to be adopted for determining the quantum of produce of the lands in the years in suit.

14. Appeals Nos. 73, 79, 80 and 83 are appeals by the landlord alone. There is no counter-appeal by the tenants, nor have the tenants appeared to contest these appeals of the landlord. These appeals are dismissed without costs.

15. In the remaining cases Mr. Parmeshwar Dayal on behalf of the tenants contends that the present claim of the plaintiff landlord is barred by proceedings under Sections 69 and 70 of the Bengal Tenancy Act. As to the paddy crop of 1324 he says that there was amicable division thereof between the landlord and the tenants and that the landlord took her share therein, but refused to grant receipt and consequently the suits were brought by the tenants. In view of the dispute between the parties on the crucial points namely, as to the system of crop appraisalment or division, it is not possible to accept the contention of Mr. Parmeshwar Dayal that there was an amicable division of the crops. I, therefore, reject the contention of Mr. Parmeshwar Dayal so far as the payment of the landlord's share of the paddy crops of 1324 is concerned.

16. As to the rabi crop of 1324, it is true the tenants applied for division of the crops u/s 69 of the Bengal Tenancy Act but it appeared that some of the crops of the land were already out and removed by the tenants and hence only the remaining crops standing on the lands were divided. The Collector, therefore, did not pass any final order in that case. On the 9th July, 1917 when the Amin's report was received the Sub-Divisional Officer stated, "It is clear that the khasra does not show actual produce of the field owing to the loss done by rains etc. As reported by the Amin the malik refused to take the hakimi share and the Amin sold the hakimi share according to the nirkhnama supplied by the Paraiya Police and deposited the sale proceed in the Treasury vide chalan No. 235 dated the 12th June, 1917. file." This is the last order in the case (No. 230 of 1916-17), Exhibit M. It does not purport to be an order u/s 70 of the Act and in no sense it is a final order under Clause 5 of the section. Therefore the proceedings adopted by the Collector under Sections 69 and 70 of the Act as to the rabi crop of 1324 cannot operate as a bar to the present claim of the landlord for her share of the produce of the lands in suit.

17. The contention of Mr. Parmeshwar Dayal, however, stands on a firmer ground so far as the produce of 1325, both paddy and rabi and the paddy produce of 1326 are concerned. Now, as to the paddy and the sugar cane crops of 1325 both parties applied to the Collector u/s 69 of the Bengal Tenancy Act and after

the preliminary proceedings the Collector on the 25th March, 1918 passed the following order.

Khasra filed. It appears that raiyats have taken in the crop their share and so the malik also. Khasra approved. Case disposed of.

18. On the next day he passed the following order:

This day a petition of objection was filed on behalf of Rani Bhuneshwari Kuar. Heard her Pleader. It is rejected for the reasons noted thereon.

19. The above orders were passed in the proceeding (Exhibit M-1) started upon the application of the tenants but by virtue of the order passed in the proceeding (Exhibit M-2) started at the instance of the landlord the same order was made applicable in the tatter case. Therefore the aforesaid orders governed both the proceedings started at the instance of the landlord and tenant for the paddy and sugar-cane crops of 1325. This order is impugned by Mr. Sushil Madhab Mullick as being not a final order under Clause (5) of Section 70 of the Bengal Tenancy Act and, therefore, it cannot operate as a bar to the claim for rent now lodged by the landlord. It is conceded that the objection of Bhuneshwari Kuar landlord was heard and disposed of as is stated in the order of the 26th March, 1918 by the Sub-Divisional Officer. But Mr. Mullick says that the Sub-Divisional Officer, has put the cart before the horse inasmuch as he disposed of the case a day prior, i.e., on the 25th March, 1918 and the objection was taken up and disposed of on the subsequent day. It is also stated that the order of the 25th March itself is inaccurate inasmuch as it mentions without any reserve that the landlord also took her share of the crops, whereas in the receipt given by the landlord with respect to the crops received on her behalf it was expressly stated that she received the crops under protest. On the 25th March, 1918 the Sub Divisional Officer's attention does not seem to have been drawn to the receipt and he apparently stated that both the raiyats and the landlord took their respective share of the crop under a misapprehension, and no doubt it is due to this misapprehension that he approved of the khasra on the 25th March, 1918. If the matter had rested there we would not have the slightest hesitation in holding that the order of the Sub-Divisional Officer of the 25th March was not a final disposal of the dispute and that it was not an order such as is contemplated by Clause (5) of Section 70 of the Bengal Tenancy Act. But the objections set forth in the receipt dated the 20th March, dealt with in the order of 25th March were reiterated in a formal objection petition filed on behalf of the landlord and that objection petition was disposed of on the 26th March, 1918. Therefore the objections taken in the receipt were also disposed of on the 26th March. The result of the order of the 25th March is that all the objections put forth on behalf of the landlord were disposed of by the Sub-Divisional Officer. The objections were rejected and therefore, the order of the 25th March approving of the khasra was allowed to stand. That order is the final order in the case.

20. Similarly, proceedings (Exhibit M-3) under Sections 69 and 70 of the Bengal

Tenancy Act were instituted for the division of rabi crop for 1325 and were disposed of and the khasra filed by the Commissioner deputed to divide the crop was approved of on the 20th May, 1918. It is urged that the khasra does not represent the entire crop of the lands in dispute, a portion having been clandestinely removed by the tenants. No doubt, Amin Abdul Nayeem, who was first deputed to divide the crops made a report to that effect, and upon the objection of both the parties this Amin was re-called and Deo Narayan Lal. Mukhtar was deputed to divide the crops with a direction to "take up the work of division at once and note the number of fields from which crop has been removed and appraise the crops of those fields u/s 71, Bengal Tenancy Act" (vide Order, dated the 26th March, 1918). On the 4th April he was further asked to test the Amin's report and to submit a detailed report. He submitted his report on the 10th April stating that there was no removal of any crop but that some crop was damaged by insects and a small portion was stolen by thieves and that the tenants were not at all responsible for this. This report was considered by the Sub-Divisional Officer with the result that the Amin's report upon which Mr. Mullick relies was declared to be false and the Mukhtar Commissioner was directed "to divide the standing crop at once:" (vide: order, dated the 11th April 1918). It is thus patent that there was no removal of any crop by the tenants and the Court accepted the report of the Mukhtar Commissioner and declined to take any action u/s 71 of the Bengal Tenancy Act as was originally contemplated by him when passing the order of the 26th of March, 1918. Section 71, Clause (4) says:

21. "If the tenants remove any portion of the produce at such a time or in such a manner as to prevent the due appraisalment or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest." The fact that the Collector re-called his previous order under the aforesaid clause shows that he was satisfied that the tenants were not at all responsible for any removal of the crops. Consequently in his final order the Sub-Divisional Officer dealt with the entire crop of the lands in dispute. That order runs as follows:

22. "it appears that the crop of raiti share has been made over to tenants and the crop of hakimi share sold and sale-proceeds deposited into the Treasury as malik refused to take it.

23. "An objection has been filed on behalf of the defendant malik, A Mukhtar Commissioner was deputed at the request of both the parties and Babu Deo Narayan Lal Mukhtar was unanimously selected as the Commissioner by both the parties. I have gone through the report and I do not find that he has submitted it in collusion with the raiyats. The defendant malik should have objected long ago. Objection disallowed.

24. "Khasra approved. Case disposed of" (vide Exhibit M-3). This order was passed after hearing the parties and disposing of all objections and is the final

order in the case. The contention of Mr. Mullick, that the entire plot was not dealt with, is under a misapprehension and is overruled.

25. Now as to the proceeding for the paddy crop of 1326, this was started at the instance of the tenants and the last order in that case was passed after hearing the parties. By that order of the 24th of March, 1919 (Case No. 20 of 1918-19) Exhibit M-4, the khasra submitted by the Amin was approved. The order is a long one and it seems to have disposed of all the objections that were raised to the proceeding and the khasra submitted by the Amin. No irregularity has been pointed out in regard to that proceeding. The cases cited by Mr. Sushil Madbab Mullick namely, Deo Lal Mahto v. Bibi Rakayia (1920) 57 I.C. 572 and Suraj Prasad Mahajan v. Karu Singh (1919) 4. Pat. L.J. 325 do not affect the proceedings and orders made in these cases, inasmuch as orders were passed after considering the objections put forward by the parties and after hearing them in full.

26. The next objection is as to the form of the orders passed in the aforesaid proceedings. It is said that the order approving the khasras filed by the Amin or the Commissioner and disposing of the cases are not such as are contemplated by Clause (5) of Section 70 of the Bengal Tenancy Act, under which the order must be in the nature of a decree capable of being executed by a Civil Court. Reliance is placed upon the case of Kailashpati Narayan Singh v. Ganga Singh (1909) 10 C.L.J. 599 and the case of Suraj Prasad Mahajan v. Karu Singh (1919) 4. Pat. L.J. 325 which is based upon the Calcutta decision. Sir Lawrence Jenkins, C.J., in the former case held that:

It must be shown that as required by Section 70, Sub-section (5) the Collector passed an order entitled to finality and enforceable as a decree.

27. The full facts of the case and the exact order passed by the Revenue Authority under Sections 69 and 70 in that case do not appear and the decision is based upon the following observations by his Lordship the Chief Justice:

28. "It is conceded before us that there is no order which in the proceedings before the sub-Divisional Officer can be treated as enforceable as a decree." That decision applies to the facts of the particular case decided and does not apply to the present case. Unlike that case we have the entire proceeding and the final orders passed in these cases and we have to see whether the orders are valid under Clause (5) of Section 70, Bengal Tenancy Act. The clause, does not require as is contended by Mr. Mullick, that a separate decree, apart from the order, should be prepared by the competent Revenue Authority. It simply requires that the order shall be final and shall, on the application by the landlord or the tenants, to the Civil Court, be enforceable as a decree. The orders in question are undoubtedly final. Now the question is whether the orders in question are enforceable as decrees. In the present case the Collector divided the crops and handed the share of the tenants and upon the refusal by the landlord to take her share in the crops, he (the Collector) directed them to be sold and the sale

proceeds to be deposited to her credit in the Treasury. No doubt in a case of appraisement the Collector does not take possession of the crops nor does he make it over to the landlord. He simply prepares an estimate of the crops u/s 69 and then reduces it into money value and declares how much is due to the landlord and how much to the tenant. In such a case the Collector's order must clearly specify the amount due from one party to the other so that the former may in execution of the order in the Civil Court receive his dues from the latter. Again in a case of division of crops, where the tenant has made himself liable to the landlord by removal of the crop or otherwise such as is provided in Section 71, the Collector's order must clearly state the amount payable to the landlord by the tenant, so that the former may receive the same in execution of the order in the Civil Court. But where there is a simple division of crops on the spot, each party is entitled to receive from the Collector, who takes possession of the crops, his share therein. The party taking his share from the Collector will not be liable to the opposite party and there can be no order to pay anything to the other party. If a party does not choose to take his share, his share will remain in deposit with the Collector. The only order that the Collector can pass is to deposit his share to the credit of that party. The order is capable of execution against the Collector if he does not give to the party his share. The sale-proceeds in the Treasury to the credit of a party can be withdrawn any moment he likes. There will not be any necessity of execution. A decree is prepared only when some liability is fixed upon a party; when no liability is fixed no decree can be prepared and in fact in some cases in the Civil Court no decree is prepared. The rules of the High Court provide that in suits for money including suits upon mortgage, in suits for specific movables, in suits for accounts, and in suits for arrears of rent no decrees need be drawn up if

- (i) neither party has to recover anything unless the Judge otherwise directs;
- (ii) the claim is satisfied after judgment but before the decree is drawn up.

29. This principle would apply to the case of division of the crops under Sections 69 and 70 of the Bengal Tenancy Act referred to above. The Amin's khasra in the present case shows the produce of the land and the share of landlord and the tenants. The tenants have received their share. The landlord refused to receive her share and consequently it was sold by the orders of the Collector and the sale-proceeds deposited in the Treasury. It is then contended that the Collector had no power to sell the share of the landlord and in support of this contention Mr. Sushil Madhab Mullick cited the case of Suroj Prosad Mahajan v. Karu Singh (1919) 4. Pat. L.J. 325. The order by the Revenue Authority objected to has been quoted at page 327 of the judgment. The order does not show that the khasra of the Amin was accepted and approved, nor does it appear as to whether the Amin sold the crops under the orders of the Collector or of his own motion. In the present case the landlord's share of the crop was sold upon her refusal to take it, under the orders of the Collector. The Collector could not keep in his charge indefinitely large quantities of grain and, therefore, the only course left to him

was to sell the same and deposit in the Treasury the sale-proceeds thereof. The money deposited in the Treasury on behalf of the landlord represents her share. If the proceeding and the order passed by the Collector under Sections 69 and 70 are otherwise valid, there is no reason to impeach its validity solely upon the ground that the money was deposited in the Collectorate to the credit of the landlord. The landlord in this case could have no claim against the tenants. No separate decree, therefore could be prepared nor, as a matter of fact, is any decree prepared in such a case. The orders in question do not contravene the requirements of Clause (5) of Section 70. It is final and is capable of enforcement against the Collector in whose hands the landlord's share is.

30. The next objection of Mr. Mullick is that the Collector had no jurisdiction to institute a proceeding u/s 70 of the Bengal Tenancy Act, inasmuch as there was a dispute between the parties as to the system of payment of rent, namely, the batai or appraisement. In support of this contention he places the case of Nukheda Singh v. Ripu Mardan Singh 4 C.W.N. 239. In that case the dispute was as to whether the rents were payable under bhaoli or nakdi system. The Collector's jurisdiction arises only when the rent is payable under the bhaoli system; and if this is disputed and a system of cash or nakdi rent is set up the Collector apparently will have no jurisdiction u/s 69 and he must leave the question to be determined by a competent Civil Court. In the present case it was admitted by both parties that the produce or bhaoli rent was payable. Therefore the Collector had jurisdiction u/s 69 to appraise or divide the crops, as the case may be, and he has a right to determine as to whether the system of payment of the landlord's share was by appraisement or division and as a matter of fact the finally published Record-of-Rights showed that the crops used to be divided by the landlord and tenant. The record was prepared and published in the year 1916 (1323) and it records the existing state of affairs and until that entry in the Record-of-Rights is disturbed and set aside by a proper authority the system of payment of rent would be as provided in the Record-of-Rights; and the presumption in favour of the continuity of that system arises. In this connection Section 51 of the Bengal Tenancy Act may be usefully referred to, which says:

If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

31. Therefore if up to 1323 the payment of rent of the holding was by division of the crops, the presumption will be that in the following years the same condition prevailed. This is an additional presumption to that afforded by the Record-of-Rights; therefore in giving effect to the entry in the finally published Record-of-Rights and to the continuity of the condition of the holding the Collector was justified in holding that the batai system of payment of the produce or bhaoli rent prevailed and in so doing he acted well within the jurisdiction vested in him by Sections 69 and 70 of the Bengal Tenancy Act. In this connection see the case

of Thakur Singh v. Pardip Singh (1917) 2 Pat. L.J. 183. I would, therefore overrule the objection of Mr. Mullick that the orders in question were not such as are contemplated by Clause (5) of Section 70.

32. The result is, that the landlord's claim for the entire crops, paddy, sugar-canes and rabi of 1325 and the paddy crop of 1326 is barred by Sections 69 and 70 of the Bengal Tenancy Act and must be dismissed. She is entitled to have from the Collector the money in deposit in the treasury as representing her share of the produce of those years.

33. It is conceded that there was no final order passed under Sections 69 and 70 of the Bengal Tenancy Act as regards the claim for the remaining years, that is 1324, and the rabi crop of 1826 and that, therefore, the landlord is entitled to the rent as found by the Subordinate Judge for the years in question. The landlord is entitled to the amount of rents due to her as found by the Court below, for those years.

34. The result is that the landlord's Appeals Nos. 49, 51, 54, 60, 64, 67, 69, 71, 73, 75, 79, 80, 81 and 83 of 1922, 90 of 1921 and 101 of 1922 are dismissed without costs, and the tenants' Appeals Nos. 50, 52, 55, 61, 65, 68, 70, 72, 76, 117 of 1922 and 91 of 1921 succeed partially. Therefore the decrees will be prepared allowing the landlord only proportionate costs upon the amount found due to her in both the Courts below. Damage will be allowed at 12½ per cent. and cess six pies in the rupee in the amended decree.

Kulwant Sahay, J.

35. I agree.