

(1916) 02 CAL CK 0013
In the Calcutta High Court

Rasul Gazi and Others

APPELLANT

Vs

Abdul Jalil Khan and Others

RESPONDENT

Date of Decision : 18-02-1916

Acts Referred:

Citation : 33 Ind. Cas. 450

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—This appeal arises out of a suit for recovery of arrears of rent and for ejectment of the defendants, who are under-ryots of the plaintiffs. The defendants held under a registered kabulyat for a term of nine years which expired in 1314. The kabulyat contained a condition that on the expiry of the term the defendants would possess the land on taking a fresh settlement at the rate prevailing for surrounding lands. The only question I have to decide is, whether this condition is a bar to the plaintiffs succeeding in a suit for ejectment on the ground of the expiration of the term of the lease. The first Court held that the covenant was too vague to be given effect to and the lower Appellate Court agreed with this view. The case of Surendra Nath Sen v. Dinabandhu Naik 4 Ind. Cas. 536 : 13 C.W.N. 595 supports this view. But a contrary decision was arrived at in the case of Secretary of State v. Forbes 17 Ind. Cas. 180 : 16 C.L.J. 217. It was there held that if the option does not state the terms of renewal, the new lease will be for the same period and on the same terms as the original lease, in respect of all the essential conditions thereof, except as to the covenant for renewal itself. I have no doubt that this latter decision is more correct and as that case was decided by a Divisional Bench, it must be followed in preference to the former decision which was that of a single Judge. The silence in the condition as to the terms for which the settlement was to be made did not render the covenant unenforceable. The lower Appellate Court further held that the defendants could not raise ejectment as they had not offered to take a re-settlement at the prevailing rate. It appears that on the expiration of the lease the plaintiffs wished to make a re-settlement at a rental of Rs. 100. The

defendants wanted to take a re-settlement at a rental of Rs. 35 which had been the former rate. There is nothing to indicate that defendants were ever unwilling to accept a settlement at the rate prevailing for surrounding lands; but they naturally wanted such prevailing rate to be assessed at the lowest possible figure. They refused to accept settlement at the rate offered by the plaintiffs solely on the ground that that was not the prevailing rate. They did not and could not dispute his right to make re-settlement at a rate higher than the former rate, if the rates of surrounding lands were higher. In the case of *Ali Mohammad Bepari v. Nayan Rajah Bhuiya* 38 Ind. Cas. 912 : 15 C.L.J. 122 : 16 C.W.N. 620 note the facts cannot be distinguished from the facts of the present case, as it was there held that the plaintiff could not eject the defendant without giving him the option to take a fresh lease on a fair rent. That case which was decided in 1903 was quoted with approval in 1911 in the case of *Abdul Karim Patwari v. Abdul Rahman* 13 Ind. Cas. 564 : C.L.J. 672 : C.W.N. 618. From this it follows that the only question in this case is, whether the tender made by the plaintiff was the tender of a lease at the prevailing rate. If it was the defendant has refused a valid tender and is liable to ejectment. If, however, the tender was not a tender at the prevailing rate for the surrounding lands, on the authority of the decision, I have just quoted, the plaintiff cannot eject the defendant. The decree of the lower Appellate Court must therefore, be set aside and the case remanded to him for the determination of this point; and according as he finds that the tender was a tender at the prevailing rate or not he will dismiss the appeal before him or reverse the decision of the first Court so far as he grants a decree for ejectment. The parties will be at liberty to adduce such further evidence as they think fit before the lower Appellate Court. Costs will abide the result.