

(1905) 07 CAL CK 0021

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2180 of 1903

Ratan Lall Biswas and Another

APPELLANT

Vs

Jadu Halsana and Others

RESPONDENT

Date of Decision : 04-07-1905

Acts Referred:

Citation : (1905) 07 CAL CK 0021

Final Decision : Dismissed

Judgement

1. This is an appeal in a suit for increase of rent on account of an increase in the area of the holding. The plaint states that the Defendants were paying Rs. 12-5-9 as rent for 20 bighas and 51/2 cottahs of land of different descriptions, but that in the year 1302, B. S., there was a measurement and the quantity was found to be 25 bighas and 16 3/4 cottahs. The Plaintiffs accordingly wanted additional rent for 5 bighas and odd cottahs.

2. The Defendants denied that there was any increase in the area of the holding. They set up the case of payment of rent at a uniform rate for a period exceeding 20 years, and urged that there was no case for increase of rent asked for by the Plaintiffs.

3. Upon the plaint and the written statement issues were framed and the following issues are important with reference to the question argued before us :-- Second, " whether the lands within the boundaries as given in the plaint, were let out in jama for a lump sum to the Defendants or to their predecessors in interest or whether the jama was originally let out on the basis of measurements, and whether the Defendants have encroached on additional lands;" and, third, "whether the Defendants' lands have increased in area. If so, which kind of land has increased and to what extent."

4. It seems from the plaint, the written statement, and the issues, that the parties went to trial on questions as to the nature of the original letting of the land; as to whether the Defendants paid consolidated rent on the area originally

let out to them and whether there was an increase in the area on any account. Both the lower Courts have found that there was no alluvial increment, and that there was no encroachment by the tenant on the adjoining land either of the landlord, or any other person, and that the tenants were holding the same lands without any variation in the boundaries. Both the Courts have, also, agreed in holding that the Plaintiffs have failed to prove what areas were originally leased to the Defendants or their predecessors. The lower Appellate Court has, also, held that there are no materials before the Court for determination of the question whether the rent was a consolidated rent or not.

5. Upon the pleadings and the findings arrived at concurrently by the two lower Courts the necessary conclusion is that the Plaintiffs are not entitled to any increase under sec. 52 of the Bengal Tenancy Act. It appears, however, that in the course of the trial, the Plaintiffs put in measurement Chittas and Jamabandis of the years 1273 and 1274, respectively. These were allowed to be put in notwithstanding that the issues as framed precluded the use of these documents as evidence; but they were used, and the Munsif came to the conclusion notwithstanding that there were no materials to show that there was any change or variation in the rents made by the so-called settlement of 1274, that there was adjustment of rents on the basis of which the Defendants agreed to pay not a consolidated rent, but rent for a specified area. Having come to that conclusion the Munsif allowed the Plaintiffs an increase of rent for an increase of the area of the holding as well as enhancement under sec. 30 of the Bengal Tenancy Act.

6. The Munsif noticed the argument of the Defendants' pleader that the rent was always consolidated rent, and in answer said that there was readjustment in 1274, though he did not notice any variation in the rents actually paid by the tenants and though their dakhilas did not show that rent was paid for a specified area. He said " even if it be conceded that the rent payable by the tenants or their predecessors in interest in 1274 was consolidated for the whole of the areas within their holding, the rent payable by them ceased to be consolidated by reason of the adjustment of 1274 of which the tenants agreed to pay rent." This finding, as we have stated, is not warranted by the frame of the issues.

7. The Subordinate Judge, in appeal, considered the question of the effect of the so-called settlement of rents in the year 1274 and came to the conclusion that there was no increase in area on account of alluvial increment or encroachment by the tenants and that the tenant Defendants were not bound to pay additional rent for increase in the area of the holding inasmuch as there was no evidence that the landlord had failed to realise additional rent on account of carelessness, neglect or some other reason. The conclusion of the Subordinate Judge is summed up in these words:--"The Respondent has not been able to show that the additional rent was lost by carelessness, neglect, or some other reason."

8. The learned vakil for the Appellant relies on one single fact for showing that the judgment of the Subordinate Judge is wrong, and that is that the quantity of land, found to be in the occupation of the Defendants in 1273, was only 20

bighas and odd, and that it is now found to be more than 25 bighas. The argument, therefore, is that the Defendants are bound to pay additional rent.

9. Now, when the Plaintiffs failed to prove the original terms, and incidents of the tenancy, when they failed to prove whether the original rent was consolidated rent payable for the entire holding or not, and when it is quite clear that the tenant Defendants have paid rent at the same rate for more than 30 years without any objection on the part of the landlord, it is against the precedents of this Court to say that merely because there has been a difference in the area of the holding the tenants are bound to pay additional rent. The Plaintiffs are bound to prove facts and circumstances which would go to show that there was some reason not within the control of the landlord for additional lands being included in the holding of the Defendants. As pointed out in the case of *Gouri Patra v. Reiley* I. L. R. 20 Cal. 579 (1892), which is the leading case on the subject, the landlord, if he wants to have an increase of rent for increase of area, must show circumstances such as are indicated above. In a latter case *Rajendra Lal Goswami v. Chunder Bhusan Goswami* 6 C. W. N. 318(1901), the learned Judges remarked that a landlord cannot successfully claim additional rent under sec. 52 of the Bengal Tenancy Act in respect of an excess of area, when he fails to show what the area of the tenure was when first created and to show that the rent originally fixed did not cover, and was not intended to cover, such excess area. The present case should be governed by the same principle, and we follow the decisions quoted above.

10. The learned vakil for the Appellants has asked us to remand the case for a finding on the following question, whether there was adjustment of rent in 1274 under which the tenants agreed to pay rent for a definite quantity of land. But our attention has not been drawn to any materials upon which the Court may come to a finding on the question. As a matter of fact, however, the answer to the question has been given by the learned Subordinate Judge, and the question being a question of fact we are bound to accept his finding, namely, that the zemindars had failed to show how the area under the last settlement of rent was ascertained, and whether the tenants were in possession of excess lands and consequently whether they had to pay additional rent under the settlement.

11. We, therefore, dismiss the appeal with costs. Our judgment in this case will govern Appeals Nos. 2412 to 2417 of 1903.