

(1917) 05 CAL CK 0017
In the Calcutta High Court

Sarat Chandra Roy

APPELLANT

Vs

Abbas Ali Mondal and Abdul Gani Mondal

RESPONDENT

Date of Decision : 25-05-1917

Acts Referred:

Citation : 41 Ind. Cas. 833

Hon'ble Judges : Newbould, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—These two appeals are preferred by the plaintiff against a judgment of the learned District Judge of the 24. Perganahs, dated the 21st September 1915, affirming the decisions of the Munsif of Barasat. The suits out of which the present appeals arise were brought for rent under the terms of two leases, and the only question that arises in these appeals is with reference to the portion of the rent that was reserved to be paid in kind. The kabuliyats, Maurasi Mukarari Patta 1916 S. A. 482 . although in similar terms, were not in identical terms. The first lease stated that the patta was granted fixing Rs. 6 as the annual cash rent and 5 3/4 aris of paddy whose price was Rs. 11-8-0 as paddy rent; in all Rs. 17-8-0. Then the lease provided that, upon the lessee keeping the boundaries of the land intact and paying cash rent in equal instalments as mentioned therein and, delivering the paddy rent every year in the month of Magh, he, his sons, grandsons and heirs should continue to enjoy and possess the land in quiet happiness. Nothing was said in that lease as to the lessee having a right to pay an amount of cash in lieu of the paddy rent. Each of these oases turns on the words used in the lease. There is no universal Rule that, if rice is not delivered, the tenant has the right to pay the amount mentioned for the paddy. It must depend on the words used in the lease and, in the first of these two cases the words "whose price is" mean "the present price of which is." There is nothing in tie wording of this patta which would entitle the tenant to hand over to the landlord the sum of Rs. 11-8-0 in lien of the rice. I think the present case is exactly on all fours with the case of Baneswar Mukherji v. Umesh Chandra Chakrabarti. In the other cases cited by Mr. Fuzlul Haq in support of his

argument reported in the Calcutta Weekly Notes, the terms of the leases are not given in the reports and it is quite dear that the Court arrived at the conclusion in those cases that the tenants had an absolute right under the terms of the leases either to deliver the rice or to pay to the landlords the sums of money mentioned in the kabuliyats. In the present cases, I do not think the tenant had any such right.

2. The second caste is a stronger case, because it states that the present market price of the paddy payable is Rs. 2-8-0. That obviously was not put in for fixing the rate that the tenant had the right to pay in default of handing over the rice. In this second case, another point has been urged that, in a farmer suit, the amount mentioned in the patta was taken as the basis of the amount of rent payable in kind. That clearly is not a case of *res judicata* and not conclusive in this suit. The second point is that the Munsif thinks that the present price of rice is not greater than the amount mentioned in the patta as the value of the paddy payable and that, therefore, the amount due must be sufficient to meet the landlord's claim. But the point was not enquired into by the learned Judge of the Court of Appeal below and, if, in fact, the amount mentioned in the patta as the value of the paddy payable be sufficient to compensate the landlord as regards the paddy when default is made, of course, the landlord is not entitled to get anything more. All that we can say in the present cases is that the result arrived at by the learned District Judge on the construction of the leases is wrong and the cases must go back to the lower Appellate Court for the re-hearing on the footing that the tenants had not the right under the terms of the pattas either to deliver the rice or to pay the amounts mentioned therein. Costs will abide the result of the re-hearing by the learned District Judge.