

(1926) 06 CAL CK 0014
In the Calcutta High Court

Saroda Prosad Pakrasi and Others

APPELLANT

Vs

Umasankar Sanyal and Others

RESPONDENT

Date of Decision : 04-06-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 168

Citation : AIR 1927 Cal 168

Hon'ble Judges : Sanderson, C.J;B.B;Ghose, J;B.B. Ghose, J

Bench : Full Bench

Judgement

Sanderson, C.J.—In this matter there are six appeals arising in six rent suits, which were disposed of in the first Court and in the lower appellate Court by one judgment in each Court. The plaintiffs are three batches of co-sharer landlords and the tenants defendants are the same in each suit. The remaining co-sharer landlords are the pro forma defendants. The plaintiffs claimed rent and a right to enhance the rent in each case. In the trial Court the plaintiff's succeeded and the learned subordinate Judge of Pabna decreed the suits and assessed the rent at double the existing rent in the respective cases.

2. The tenants defendants appealed to the Additional District Judge and the learned Judge came to the conclusion that the rent was not enhanceable but that it was fixed in perpetuity and consequently he allowed the appeals. The plaintiff landlords appealed to this Court.

3. The first point to which it is necessary for me to refer is the argument which was addressed by the learned advocate for the respondents, that the plaintiffs were not entitled to maintain the suits by reason of the provisions of Section 168 of the Bengal Tenancy Act. I see no reason to differ from the conclusion at which the learned District Judge arrived in that respect having regard to the terms of the kabuliyat, which is printed at page 70 of the paper-book containing the additional papers, and having regard to the other facts of the case. I need say no more than that I agree with the conclusions of the learned District Judge and the learned Subordinate Judge, namely, that the plaintiffs were entitled to maintain

the suits.

4. The next point relates to the rejection of a certain document which was described by the plaintiff's as the "Likhan" in respect of the Pattani Majkuri Taluk granted by the Maharajadhiraj Earn Krishna Boy Bahadur to be called for from witness. The name of the witness given was Khirod Lall Pakrasi. The learned Subordinate Judge did not allow that document to be put in evidence. The learned District Judge stated that if he had been trying tire suits as a Court of first instance he might have been inclined to admit the document, but that he was unable to say that the learned Subordinate Judge, in the circumstances, had exercised his discretion wrongly. The document in question was alleged to be a certified copy of a document dated the 11th Chaitra 1201 B.S. (corresponding to 24th March 1795), and it was alleged that by that document the Maharajadhiraj Ram Krishna Roy had created a non-permanent Majkuri Taluk at a rent of Rs. 4,891 in favour of Ganga Gobinda Sanyal, who was alleged to be the predecessor in title of the defendants in these suits.

5. On the question whether the rent is liable to be enhanced it cannot be doubted that that document was material and the question, which arises in connexion with that document is whether by reason of the provisions of Order 7, Rules 14 and 18 of the Civil P.C., the document is admissible or not Rule 14 is as follows:

(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the sumo time deliver the document or a copy thereof to be filed with the plaint.

6. The part of the rule does not apply to this case. Sub-rule (2) provides:

Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

7. The provision is specific, and it is clear that the plaintiffs did not enter this particular document in a list which was added or annexed to the plaint. The result therefore was that Order 7, Rule 18 came into operation. That rule provides as follows:

A document which ought to be produced in Court by the plain till when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

8. In this case therefore inasmuch as the plaintiffs did not comply with the provisions of Order 7, Rule 14, the document in question could not be admitted unless the plaintiffs succeeded in obtaining the leave of the learned Subordinate Judge. The question in this appeal with regard to that matter is, in my opinion, whether the learned Subordinate Judge had sufficient materials before him, which would justify him in the exercise of his judicial discretion in refusing the

admission of that document. I am inclined to agree with the learned District Judge. If I had been trying these cases I should have been inclined to admit the document on terms and I would have given the defendants ample opportunity of substantiating their allegation, which was that this document was not a genuine document. But I am sitting in a Court of appeal and it is for the appellant to show that the learned Subordinate Judge exercised his discretion wrongly in deciding that the document ought not to be admitted.

9. The material facts, in my opinion, are these : In March 1914 the plaintiffs filed a list of documents in Court and referred to this document in these terms:

The likhan in respect of the Pattani Majkuri Taluq granted by Maharajadhiraj Ram Krishna Roy. The certified copy to be filed afterwards of the said likhan through witness Kshirod Lal Pakrasi.

10. The plaintiffs in July 1914, gave notice to the defendants to produce the original paita. The defendants in the same month of the same year stated that they had no such document. Then in the following year 1915 in the month of June the case was tried.

11. One of the points at the trial was whether the plaintiffs were entitled to sue having regard to the provisions of Section 188 of the Bengal Tenancy Act, and it was on that ground that the learned Judge who tried the cases dismissed the suits. But it is clear from what was read to us today by the learned advocate for the defendants that one of the issues was whether the rent was enhanceable. It is clear that evidence was produced in respect of that issue and from the learned Judge's judgment it is clear that although he decided the case upon the preliminary point, that the plaintiffs were not entitled to sue by reason of the provisions of Section 188, he had evidence upon the other issues. If that be so, I do not understand how it was that the plaintiffs did not call upon the witness, who was supposed to have this document in his possession to produce it at the trial in 1915. There was an appeal to the lower appellate Court and then an appeal to the High Court. The case was remanded sometime in 1919 for further trial. Then it was that the plaintiffs for the first time endeavoured to give evidence in respect of that document in 1920, and the learned Subordinate Judge rejected it. Having regard to the circumstances, I think it is impossible to say that the learned Judge did not exercise his discretion in a judicial way. I think it is impossible to say that there were not materials before him which would justify him in coming to the conclusion that the document should not be admitted. The result therefore is that on this point the appeal must fail.

12. The other question, with which I have to deal, is whether the learned District Judge was right in his conclusion that the rent, in respect of the taluk, was fixed in perpetuity. In spite of the argument which was addressed to us by the learned advocate who appeared for the appellants (to which it was a pleasure to listen) I am not convinced that the learned District Judge was wrong. I think the learned District Judge's conclusion as regards the origin of the taluk is right on the

evidence which was before him. In the first place he held that the taluq could not have been in existence at the time of the Decennial Settlement. That I understand was in 1789. In my opinion there is no doubt about that.

13. The learned District Judge then held that it must have come into existence between 1789 and 1801. There is no doubt about that, because it was not in existence in 1789 and it clearly was in existence in 1801, because the revenue sale by which the Pakrasi brothers became the owners was in 1789 and there was a partition between those two brothers by metes and bounds in 1800. It was either in 1799 or 1800 that the men taluqdar was dispossessed by the purchasers at the revenue sale. Therefore I agree with the learned Judge so far. The learned District Judge then proceeded to say "whether before or after 1793 there is no indication whatever." If the document, to which I have already referred is excluded from evidence, I agree with the learned District Judge that there is nothing to show whether the taluq was created before or after the Permanent Settlement of 1793. It must have been created, in my opinion, about that time. It may have been shortly before or shortly after.

14. The learned advocate, who appeared for the appellants, argued that even if the taluk had been created before the Permanent Settlement the fact that the rent was enhanced in 1803 is sufficient to show that the rent was not fixed in perpetuity. Here again I agree with the learned District Judge's conclusion. The rent came to be enhanced in 1803 by reason of the fact that Ganga Gobinda Sanyal, the then talukdar, who had been dispossessed, brought a suit. As the result of that suit a decree of the Court was made, as I understand, to the effect that he should be restored to possession on his undertaking to pay the rent in accordance with that which was customary at that time in the pargana. That order was made in pursuance of Section 5 of Regulation 44 of 1793. It is obvious that Section 5, deals with, an exception to the provisions of Section 4 of that Regulation. I need not read the terms, inasmuch as the section has often been the subject of judicial consideration. I cannot agree with the contention of the learned advocate for the appellants as to the effect of Section 5. In my opinion it is this. It means that the talukdar was entitled, to stay in or get possession of the subject of the tenure, provided that he was prepared to comply with the demand, which the purchaser was entitled to make under the section, which was to collect:

whatever the former proprietor would have, been entitled to demand according to the established usages and rates of the pargana or district in which such lands may be situated, had the engagement so cancelled never existed.

15. The fact that the talukdar had to pay enhanced rent by reason of the provisions of Section 5, in my opinion, does not show conclusively that the rent was not fixed. The question, therefore, remains to be considered upon the main facts of these cases.

16. The learned District Judge in a careful and well-considered judgment,

weighed the facts which were undoubted and. came to the conclusion that, although in the first instance the onus was upon the defendants to show that the rent was a fixed one in perpetuity, that onus had been removed by reason of the main facts of the case which had been proved. In the first place the tenure which was undoubtedly vested in the defendants predecessor was described as a patni, it undoubtedly had the other ordinary incidents which were attached to a patni tenure, and there was no reason why it should not have the usual incidents of a fixed rent. In the next place there is the fact that the rent was at the same rate for about 100 years and there is no doubt that the value of the tenure must have increased to a very large extent having regard to the remarks which were made by the learned Subordinate Judge in his judgment. He considered from the calculations which had been put forward that the existing jama was liable to be enhanced to even 5 times in certain cases." In order to be on the safe side and having regard to the circumstances he contented himself by increasing the jama to double the existing jama in the respective cases. The value having increased to such an extent and there having been no variation of rent for so many years and having regard to the undoubted nature of the tenancy, I am not satisfied that the learned District Judge was wrong in arriving at the conclusion that the rent in this particular tenure was fixed in perpetuity.

17. The appeals are dismissed with costs.

B.B: Ghose, J.

18. (After setting out the facts his Lordship proceeded:) The main contention is whether the rent payable, as I have already stated, is liable to enhancement. I may here add that we had a very elaborate and interesting argument attacking the judgment of the learned District Judge, but after carefully considering the argument, I am of opinion that the judgment of the learned District Judge must be supported.

19. The first contention that is raised is with regard to Section 6 of the Bengal Tenancy Act; and it is argued that this particular tenure was not held from the time of the Permanent Settlement and that, therefore, there was nothing to prevent the landlord from asking for enhancement of rent.

20. In support of this contention it was urged that a copy of a certain document was wrongly refused by the Subordinate Judge in the trial Court and that, although the learned Additional District Judge, on appeal, expressed the opinion that if he had been sitting as a Court of first instance he would have accepted the document, he declined to admit it as the Subordinate Judge, in his opinion, had given sufficient reasons for exercising his discretion in not accepting it. It is urged that it should have been admitted in evidence, and it would show that the tenure was created after the Permanent Settlement.

21. I will deal with this point later on. For my present purpose I will proceed on the assumption that this tenure was not held from the time of the Permanent Settlement. Assuming that to be so, the contention of the learned advocate for

the appellants was that his clients were entitled to enhancement of rent u/s 7 of the Bengal Tenancy Act which commences thus:

Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

22. The argument in substance appears to be that where a tenure has not been held from the time of the Permanent Settlement the landlord is *prima facie* entitled to enhancement of rent. There is a large body of authority in support of this contention; for instance, the case of *Bamasoondery Dassiah v. Radhika Chowdhurani* [1869] 13 M.I.A. 248, which lays down that the zemindar has a *prima facie* right to ask for enhancement of rent of under-tenures from time to time unless there is anything to prevent him from doing so the question, therefore, resolves itself into this : whether having regard to the circumstances of the case as found by the learned Judge, there is anything to prevent the landlord from asking for enhancement of rent; and in deciding this question regard must first be had to the rights of the parties in these cases with reference to the provisions of Section 5 of Reg 44 of 1793. The plaintiff's in those cases claim title by succession from the auction-purchasers at a revenue sale of the zemindari and it is urged that they are not bound by any contract as to fixity of rent if the tenure was created after the Permanent Settlement the question with regard to the construction of this section, the terms of which appear to be very drastic, is *res integra*. This section was construed by the Judicial Committee in the case of *Railee Surnomoyee v. Maharajah Suttees Chunder Roy Bahadoor* [1864] 10 M.I.A. 123; it was observed by their Lordships:

Now looking at what follows in the same clause, it is obvious that no such absolute cancellation was intended, for the power expressly and affirmatively given to the purchaser supposes the talookdars and the ryots to remain in all respects as before, except that they became liable to a certain limited increase of rent, according to the established usages and rates.

23. At page 147 their Lordships observed:

The conclusion at which their Lordships have arrived as to the construction of the section is this that a power was given by it to the purchaser at a Government sale for arrears to avoid the subsisting engagements as to rent, and to increase the rent to that amount at which, according to the established usages and rates of the pargana, or district, it would have stood had the cancelled engagement so avoided never existed. This gives it a, just and reasonable operation, and virtually it would have had none, when the existing rent was already according to the usages and rate of the pargana.

24. The revenue sale, therefore, did not affect the other forms of the contract which there might have been between the parties at the time of the creation of the tenure.

25. We have no direct evidence as to what the actual terms were as regards the enhanceability of the rent. This must, therefore, be inferred from the other circumstances in the case, and the other circumstances from which an inference may be drawn have been very carefully stated by the learned District Judge from whose judgment those appeals are preferred, I need refer to only a few of them the first is the statement in the document to which I have already referred that the tenure was a putni. In my opinion the grant of a putni connotes that the rent is fixed and I say this as I may claim a certain amount of experience with regard to what putni taluks are.

26. A case has been cited on behalf of the appellants reported in Bhupendra Chandra v. Harihar 24 C.W.N. 874, where it seems to have been observed that the expression "putni taluk" did not import fixity of rent. The judgment however is not based on that ground as will appear from the following observation:

But it is perfectly plain that this document does not ornate a putni taluk, in other words, a taluk subject to the summary procedure for realization of rent provided by Reg. 8 of 1819.

27. The learned Judge in the Court below has, in my opinion, rightly distinguished this case in his judgment where he observes:

In that case the tenants relied on the description of the taluk as a putni, but it was found to be liable to enhancement.

28. Lower down he says:

It was conceded that the document did not create a putni taluk in the technical sense, and there was no reference to the terms of the putni Regulation.

29. The only thing that may be said is that the mere mention of a taluk as a putni taluk does not create a putni taluk. There may be other terms in the document which may show that although the word "putni" was used it was not really a putni taluk; and in the case referred to above it would appear that it was conceded by the party claiming under the kabuliya that it was not a putni taluk. This case is, therefore, of very little authority in favour of the contention that the use of the word "putni" does not connote fixity of rent.

30. On the other hand, by a reference to the preamble under Reg. 8 of 1819 it would be found that tenures with a right of heritability and fixity of rent were being created in spite of the prohibition under the regulations for a considerable number of years known as putni taluks, and that regulation was enacted for the purpose of regulating the rights of the parties as regards realization of rent and so on. Further, in the documents which were executed so late as 1897 there is a reference to the fact that the tenures would be liable to sale under the provisions of Reg. 8 of 1819. Taking these facts together into consideration it would require a very strong circumstances to show that the rent was not fixed in perpetuity.

31. Having regard to the facts to which I have referred I need not refer in detail

to the use of the word "majkuri" in that documents relating to this tenure. As the District Judge has pointed out the word "majkuri", according to Mr. Field in his well-known introduction to his edition of the Bengal Regulations under note (2) of Section 35, was an older name of a sikmi taluq, which means older than the Decennial Settlement, and the definition of the word in Wilson's Glossary is much more favourable to the position of tenants, because it shows that tenure-holders holding a majkuri taluq were only to pay the revenue through the zamindars. We may accept the contention on behalf of the appellants that these words were not used according to their true significance but were loosely used in those documents. But, apart from that, the use of the word "putni" and the fact stated that Regulation 8 of 1819 should be had recourse to for the purpose of recovering arrears of rent are sufficient to establish the fact of the fixity of rent. One other case was relied upon by the learned advocate for the appellants. It was the case of Mukbul Ali Chowdhury v. Jogesh Chandra Roy [1920] 30 C.L.J. 140, where it was observed that the mere fact that there was a stipulation in the kabuliyat that Regulation 8 of 1819 might be resorted to for the purpose of recovery of rent did not import fixity of rent. There cannot be any dispute with regard to that question whatsoever, because in that case the tenure was an *etmām* created with reference to lands which were situated in a temporarily settled estate, and with regard to such a tenure the mere fact that the parties had agreed that resort might be had to the Putni Regulation to recover arrears of rent could not mean that the rent was permanently fixed.

32. Then, I would further observe that having regard to the lapse of a long series of years extending to a century, when the value of the property has gone up at least 500 per cent, according to the estimate of the Subordinate Judge, and no attempt having been made during all this period to claim any enhancement of rent, a legitimate inference can be made that the original contract was that the rent should be fixed for ever. I may [refer here to the observations made by their Lordships of the Judicial Committee in the case of *Dhunput Singh v. Gooman Singh* [1867] 11 M.I.A. 433. At page 466 their Lordships observe:

Upon this second point, the evidence of the subsequent acts and conduct of the zamindars is material only in so far as the receipts and proceedings above referred to show, that both Aghum Singh and his successors were described as *Mocurreredars*. Their Lordships are not prepared to say that, from this evidence, a Court or jury might not legitimately infer, as against the first is zamindar and his successors, either that the rent had been always fixed, or that by subsequent contract, that which had been originally variable had been made invariable.

33. The circumstances of these cases all lead to the legitimate inference that even assuming that this tenure was created after the Permanent Settlement the rent was originally fixed or it might have been fixed at some other time about which there is no evidence.

34. I must next shortly deal about the reception of the copy of a potta about which the appellants have made a grievance before us. There cannot be any

doubt that the plaintiffs have been guilty of gross laches in the production of this document, and in these particular cases it cannot be said that the Subordinate Judge was entirely wrong in rejecting the acceptance of the document-in the exercise of his discretion. I need not recapitulate the facts again, but the argument on behalf of the appellant gains support from the observations made by the learned Additional District Judge on appeal. I should myself have thought that where there was no reasonable ground for suspicion that a document might have been fabricated after the filing of the plaint such as documents obtained from public offices or copies obtained from Court and with regard to which the other side might not be prejudiced as being taken by surprise not having any opportunity of adducing rebutting evidence, the Court may properly, in the exercise of its sound discretion, receive such documents in evidence and then decide as to their probative value giving every opportunity to the other side to rebut the effect of those documents if they were believed. In these cases the document was alleged to have been a copy obtained from some Court where the original was alleged to have been filed, and under these circumstances, if the plaintiffs had not been so negligent in the production of the document in Court, it might reasonably have been accepted by the Court. I would only impress upon the trial Court the fact, as observed by the Judicial Committee in the case of *Indrajit Pratap Sahi v. Amar Singh* AIR 1923 P.C. 128 that:

rules of procedure are not made for the purpose of hindering justice.

35. Wide discretion has been given to the Court with regard to matters of reception of evidence although the documents have not been entered in the list of documents filed by the parties, and this discretion should be exercised for the furtherance of justice.

36. The last point that remains I with regard to the application of Section 188 of the Bengal Tenancy Act to these cases. The learned advocate for the respondents endeavoured to support the judgment of the learned Judge on the ground that the suits for enhancement of rent were not maintainable having regard to Section 188 of the Bengal Tenancy Act. I need only say that, having regard to the terms of the *knbuliayt* of 1897 there is no doubt in my mind that the interest of the tenants as well as the interest of the landlords have been separated. It cannot be said that the plaintiffs still remain the joint landlords of the tenants.

37. On the grounds I have stated I agree that the appeals must be dismissed with costs.