

(1932) 08 CAL CK 0026
In the Calcutta High Court

Sasanka Kumar Nayak and Others

APPELLANT

Vs

Hitlal Sow and Others

RESPONDENT

Date of Decision : 11-08-1932

Acts Referred:

Citation : AIR 1933 Cal 617 : 145 Ind. Cas. 856

Hon'ble Judges : Mallik, J

Bench : Division Bench

Judgement

Mallik, J.—This appeal arises out of a suit for enhancement of rent of a holding on two grounds: on the ground of excess of area and also on the ground of rise in prices. The plaintiff's claimed enhancement of rent on the ground of rise in prices at the rate of six annas in the rupee and their case was that when the land was let out, the area mentioned in the kabuliyat was 34 bighas only, whereas on actual measurement it has been found to be 42 bighas 17 cottas and the plaintiffs were therefore entitled to an additional rent on the excess area of 8 bighas 17 cottas there having been a stipulation in the kabuliyat that the tenant would be liable to enhancement if the area of the holding would be found on actual measurement to be more than 34 bighas. In the plaint it was also stated that at the time when the land was let out the standard of measurement was 80 cubits to a bigha and 18 inches to a cubit.

2. The plaintiffs' claim was resisted by the defendants on the allegation amongst others that at the time of the settlement, the area was given Dak Surat which I take it means something like guess. The Court of first instance found in favour of the plaintiffs on the question of excess area and gave to the plaintiffs an enhancement of rent on the ground of additional area. It gave to the plaintiffs also enhancement of rent on the ground of rise in prices at the rate of 2 annas 9 pies in the rupee having taken for comparison purposes two decennial periods, one of 1916 to 1925 and the other of 1906 to 1915; the first period, viz. 1916 to 1925 being the period immediately preceding the institution of the suit. Against this decision of the trial Judge there was an appeal preferred by the defendants

and the plaintiffs also filed a cross-objection. The appellate Court disallowed the plaintiffs' claim for enhancement of rent on the ground of additional area and it disallowed also the plaintiffs' cross-objection keeping the first Court's decree for enhancement on the ground of rise in prices at the rate of 2 annas 9 pies in the rupee intact. The plaintiffs have come up to this Court in second appeal.

3. I do not think the order of the lower appellate Court by which it refused to give any enhancement of rent on the ground of additional area can be maintained. It is no doubt true that the landlord before he can get an enhancement on the ground of additional area must show that the present area is in "excess of the area at the time of inception of the tenancy. In the present case it is an undeniable fact that the present area of the holding has been found to be 42 bighas 17 cottas when measured by the standard measurement of 80 cubits to a bigha and 18 inches to a cubit. The learned Subordinate Judge refused this enhancement to the plaintiffs on the ground that there was no evidence to show what had been the standard of measurement at the time when the tenancy was created. But as has been held in a decision of this Court in *Birendra Kishore Manikya Bahadur Vs. Bhola Mia Majumdar and Others*, the presumption must be that the standard of measurement at the time of letting out was the same as it is now unless anything to the contrary is proved. In the present case there was an allegation from the very beginning that the standard of measurement at the time of letting out the tenancy was 80 cubits to a bigha and 18 inches to a cubit, and although there was a denial in the written statement to the effect that the standard of measurement was not as alleged in the plaint, there was no proof in the case to the contrary that the standard was not what had been alleged in the plaint. That being so, on the strength of the decision in *Birendra Kishore Manikya Bahadur Vs. Bhola Mia Majumdar and Others*, it must be presumed that the same standard continued, or in other words the standard of measurement at the time when the land was actually measured and found to be 42 bighas 17 cottas in area was the same as it had been at the time of letting out the land. The case in *Birendra Kishore Manikya Bahadur Vs. Bhola Mia Majumdar and Others*, appears to have been cited before the learned Subordinate Judge. The learned Subordinate Judge no doubt in his judgment says that case had no application to the present case, but he made no attempt to distinguish the one from the other.

4. On behalf of the., appellants it was said that the plaintiff's were entitled to an enhancement at a rate higher than what has been allowed to them. The contention is that the Courts below did not exercise proper discretion when they accepted for the purpose of comparison the two decennial periods, 1916 to 1925 and 1906 to 1915: It was said that to accept the decennial period of 1906 to 1915 for the purpose of comparison was not equitable. The learned advocate for the appellants however could not satisfy me as to why it was not equitable. No doubt it is true that if another decennial period, e.g. 1887 to 1896, would have been accepted for comparison purposes the plaintiffs might have been entitled to something more than 2 annas 9 pies in the rupee. But for the purposes of equity

the plaintiffs landlords are not the only persona to be taken into consideration. The interest of the tenants also ought to be borne in mind when considering the question of equity as between the tenant and the landlord. I would not therefore interfere with that part of the decree of the lower appellate Court by which the plaintiffs have been allowed an enhancement on the ground of rise in prices at the rate of 2 annas 9 pies only.

5. The result therefore is that the plaintiffs will get an enhancement on the ground of excess area as claimed by them and also on the ground of rise in prices at the rate of 2 annas 9 pies in the rupee, or in other words the decree of the Court of first instance is affirmed. There will be no order as to costs.