
(1925) 03 CAL CK 0088
In the Calcutta High Court

Sashi Mohan Tarkasastri and Others

APPELLANT

Vs

Meajan Haji and Others

RESPONDENT

Date of Decision : 31-03-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 67

Citation : AIR 1926 Cal 255 : 90 Ind. Cas. 570

Hon'ble Judges : Suhrawardy, J; Duval, J

Bench : Division Bench

Judgement

1. The only question involved in this appeal is as to the rate of interest which the plaintiff is entitled to recover for arrears of rent. The kabuliyat creating the tenancy was executed by Aminuddi Meji in 1(sic)73. One of the terms of the contract was that "In case of default in paying a kist I shall pay interest at the rate of Rs. 6 4 per cent. per mensem: If notwithstanding this I withhold the payment of rent you will be entitled to realise the arrears of rent with interest and damages by instituting a suit." The present suit was brought by the landlord for recovery of arrears of rent with interest at 75 per cent annum for overdue instalments. He also claimed damages at 75 per cent, on arrears of cesses. The learned Munsif was of opinion that the clause was penal in its character and, therefore, the plaintiff was not entitled to recover interest at such a high rate as 75 per cent, per annum. He accordingly decreed the plaintiff's claim for arrears of rent with damages at 25 per cent. The learned District Judge on appeal has observed that there can be no doubt that the clause that not only shall interest be at 75 per cent, but also that damages will be payable is a penal one and it is, therefore, in the discretion of the Court to allow reasonable compensation instead of the penalty. In this view he agreed with the First Court and dismissed the appeal.

2. In appeal it is argued that the construction put upon the kabuliyat by the Courts below is wrong and that under the law the plaintiffs are entitled to recover interest at the rate claimed. With regard to the construction of the kabuliyat we

do not agree with the view taken by the Courts below. If any term may be called penal in it, it is the term relating to damages in default of payment of rent at the stipulated time. But it is not necessary to consider this matter further.

3. The more important question that arises in the present case is whether under the stipulation in the kabuliyat payment of interest at the rate of 75 per cent, per annum is recoverable. It appears that the kabuliyat creates a permanent raiyati holding but not a mokarrari holding. It also appears that the holding was sold for arrears of rent in 1899 and purchased by the defendants. The question, therefore, that arises is whether the plaintiffs are entitled to recover from the defendants who are auction-purchasers in execution of a rent-decree, the interest at the stipulated rate. In support of the appellant's contention reliance is placed upon the Full Bench decision of this Court in the case of Lal Gopal Dutt v. Manmatha Lal Dutt 32 C. 258 : 9 C.W.N. 175. There it was held that an auction-purchaser at a sale in execution of a rent-decree of a tenure is liable for interest at the rate mentioned in the kabuliyat and not at the rate mentioned in Section 67 of the Bengal Tenancy Act. The facts of that case were that a tenure of 500 bighas with a jama of Rs. 285 and odd was sold in execution of a rent-decree and purchased by the defendants who were co-sharer landlords. On these facts the Full Bench held that the defendants were liable to pay interest at the stipulated rate. On behalf of the respondents reliance has been placed upon the decision of this Court in the case of Annadamoyi Debi v. Saudamini Debya 72 Ind. Cas. 719 : 37 C.L.J. 333 : 27 C.W.N. 502 : AIR (1902) (C.) 559. In our judgment the facts of that case are similar to those in the case before us and the ratio of that decision is applicable to the present case. In that case a raiyati holding was sold but in the sale processes no indication was given of the stipulation about interest. The learned Judges were of opinion that the defendant was not liable to pay the high rate of interest as it was not an ordinary incident of a tenancy of that character and they approved of the dictum of Banerjee J., in Kali Nath Sen v. Trailokhya Nath Roy 26 C. 315 : 3 C.W.N. 194 : 13 Ind. Dec (N.S.) 805: "The distinction between usual and unusual terms of a contract of tenancy is a distinction which should be taken into consideration in determining whether the incident in question continues to attach to the tenancy, notwithstanding its sale for arrears of rent". Annadamoyi Debi's case 72 Ind. Cas. 719 : 37 C.L.J. 333 : 27 C.W.N. 502 : AIR (1902) (C.) 559 is attempted to be distinguished on the ground that in that case it was a simple raiyati whereas in the present case it was a permanent raiyati holding and, therefore, the principle of the Full Bench case of Lal Gopal Dutt v. Manmatha Lal Dutt 32 C. 258 : 9 C.W.N. 175 should apply. Section 179 of the Bengal Tenancy Act admittedly does not apply to such a lease because it is not a permanent mokarrari lease. In the Full Bench case as I have observed the facts were that the defendant at the time of his purchase at the auction was aware of the special stipulation being one of the lessors. Maclean, C.J., referred this to this special circumstances of that case: "In the present case the purchaser certainly cannot complain, he was one of the original lessors, and must be taken to have notice of

the terms of the lease, if that were necessary". After making this observation the learned Chief Justice adds: "But apart from any such consideration, the lease had not expired: and the purchase must be taken to have been made subject to the conditions of the lease". The only other judgment in the case was that of Rampini, J., who depended entirely upon the special features of the case for his decision. The learned Judge observed: "Then in that case [Kali Nath Sen v. Trailakhya Nath Roy 26 C. 315 : 3 C.W.N. 194 : 13 Ind. Dec 805] the tenancy was not put up to sale subject to the terms of the kabuliyat executed by the former tenant. But in this case it is clear that the tenure was sold subject to the terms upon which it was held. Moreover, in this case the purchasers are some of the proprietors of the tenure held under the kabuliyat of the terms of which they must have been well aware". It is evident from this remark that what influenced the learned Judges in that case was that the defendant with full knowledge of the terms of the contract and the special incident of the tenancy had purchased it and should not, therefore, be allowed to turn round and deny liability under the contract. In the present case the sale certificate described the holding sold simply as a raiyati of 9 cottas and 5 gundas of land with Rs. 19 as jama. It cannot, therefore, be contended that the defendants had notice of this special term of the contract. Reliance has also been placed on behalf of the appellant on the case of Narendra Nath Sarkar v. Moniruddi Howladar 69 Ind. Cas. 109 : 35 C.L.J. 209. There also Maclean, C.J., with the concurrence of Geidt, J., held that though the rate of interest was exorbitant it was recoverable from the defendant. That was a case of a howladari tenure and not a raiyati tenure and it does not appear from the report that the auction-purchaser in that case was not aware of the terms of the kabuliyat.

4. In the above view, though we do not accept the reasons of the Courts below, we think that their decision is substantially correct. We accordingly dismiss this appeal with costs.