
(1924) 06 CAL CK 0050
In the Calcutta High Court

Sasi Kanta Acharjee Bahadur

APPELLANT

Vs

Genda Sheikh and Others

RESPONDENT

Date of Decision : 11-06-1924

Acts Referred:

Bengal Tenancy Act, 1885 — Section 29

Citation : AIR 1925 Cal 389

Hon'ble Judges : Chakravarty, J

Bench : Division Bench

Judgement

Chakravarty, J.—This is an appeal by the plaintiff and arises out of a suit brought by him for recovery of arrears of rent at a rate which was agreed between the parties by a registered kabuliyat dated the 23rd of May, 1.916. The facts which are necessary for the determination of this appeal are as follows: One Samir the predecessor of the defendants was by a right of inheritance entitled to one-fifth share of an occupancy holding. He purchased also a non-transferable occupancy holding which belonged to somebody else. He approached his landlord and prayed for sub-division of his ancestral holding and also for recognition of his right as a purchaser of the occupancy holding which he had bought. It seems that the parties agreed and the result of that agreement was the kabuliyat which I have already mentioned. By that kabuliyat the one-fifth share which Samir inherited was amalgamated with the land he had purchased and a new holding was created at a rental of Rs. 15-7-0. In arriving at that sum the kabuliyat states that the rent of the old holding was taken to be Rs. 46 12-6 and the rent of the purchased jote of Samir was taken to be Rs. 5-8 3. The one-fifth of the rent of the jote together with the rent of the purchased jote was Rs. 15-7-0 and that is the rent which Samir agreed to pay for the consolidated holding which was created by that kabuliyat. The rent due under that kabuliyat for the years 1323 to 1326 is the subject-matter of the present suit.

2. The defence of the defendants who were the representatives of Samir was that the kabuliyat was not voluntarily executed by Samir, that he was not

cognizant of the terms of the kabuliyat and in fact that the kabuliyat was extorted by force. They further contended that the rent was not realizable because it contravenes the provisions of Section 29 of the Bengal Tenancy Act.

3. This suit was tried along with other suits and we are concerned with suit No. 530 out of the three suits tried together. The learned Munsif found that the kabuliyat was executed voluntarily and with full knowledge of its contents and that it was validly executed. The learned Munsif, however, gave effect to the second defence and reduced the rent from Rs. 15-7-0 to Rs. 12-5-11 per annum and made a modified decree on that basis. On appeal by the landlord-plaintiff the learned Subordinate Judge has affirmed the decree of the Munsif and the present appeal is by the plaintiff against the decree of the Subordinate Judge.

4. It was contended in appeal by Babu Jogesh Chandra Ray, the learned Vakil, for the appellant, first that the kabuliyat having been found to have been duly executed and to be valid deed the plaintiff was entitled to a decree at the rate of Rs. 15-7-0 as agreed between the parties and evidenced by the kabuliyat. The next contention of the learned Vakil was that as the kabuliyat had been allowed to stand unquestioned the defendants were not entitled to object to one of its terms without previously having sought either to rescind or reform the contract and thirdly it was contended that there was really no contravention of Section 29 of the Bengal Tenancy Act in the claim by the plaintiff in the present suit.

5. I think these contentions are sound. It is to be regretted that the respondents do not appear in the present appeal. The kabuliyat really is for a consolidated new holding created by the amalgamation of a part of the old occupancy holding with the land of another occupancy holding which was non-transferable but to the transfer of which the landlord gave his consent and agreed to create the tenancy evidenced by the kabuliyat. As there was a promise to pay Rs. 15-7-0 as rent of this new holding the defence of the defendants that the contract was not binding on the ground that it was taken by force having failed there is absolutely no reason why the landlord should not be entitled to claim rent as settled by that kabuliyat. There is no question of any enhancement here of any existing tenancy. It was really a tenancy created for the first time. It has been held in numerous cases that a tenancy created by amalgamated additional land with an existing occupancy holding is not controlled by Section 29 of the Bengal Tenancy Act. In this connection the learned Vakil refers to the case of Sahar Munshi v. Jnanada Sundari (1920) 33 C.L.J. 134. The principle laid down in that case is ordinarily applicable to the present case. It had been ingeniously suggested, however, for the defence before the lower Courts that although this rent was agreed to be paid for the holding created by amalgamation of lands as stated in the kabuliyat but in arriving at the rent payable for the new holding the jama of the old holding was increased from Rs. 29 odd to Rs. 46 odd and the proportionate rent payable for the one-fifth share was not taken to be one-fifth of Rs. 29 odd but one-fifth of Rs. 46 odd and, therefore, it was really an enhancement of the rent of the old holding. I do not see that it is so as the rent agreed to be paid for the new

holding was Rs. 15-7-0 on whatever basis it is arrived at. It might be, I do not say it was, that the parties agreed to take Rs. 46 odd as the jama of the old holding although it was not so. But that did not of itself in any way affect the promise of the tenant to pay Rs. 15-7-0 as rent for the newly created holding. The way in which it was attempted to be shown that the rent was taken to be Rs. 46 odd instead of Rs. 29 odd was this. The learned Subordinate Judge says that the Record-of-Rights shows that the jama of the occupancy holding of which Samir got one-fifth share was recorded as Rs. 29-13-5 and it was for the landlord to show that the rent was really Rs. 46 odd and having come to the conclusion that the rent was Rs. 29 odd the lower Appellate Court says "the jama of Rs. 46-13-6 entered in the kabuliyat is either a misrepresentation or a mistake. In either view of the case the contract based on this amount is not enforceable in law." It is somewhat difficult to follow this reasoning. It has been found that the contract was not vitiated either by fraud or coercion as alleged by the defence. If that is so what is the justification for the lower Appellate Court to say that a particular item as mentioned in the contract was either vitiated by misrepresentation or mistake. This was not the defence or such a defence would be inconsistent with the defence that the kabuliyat was taken by coercion. It may well be that the rent recorded in the Record-of-Rights which was published in the year 1915, shortly before this kabuliyat was executed was not the true record and until the contrary is established we must take the deliberate statement of the parties as contained in a document which is shown to have been executed voluntarily and properly by the parties as correct. The Court below did not refer to any evidence to that effect. Then again as has been contended by the learned Vakil for the appellant how is it possible for the defendants to refuse to be bound by one of the items of a contract which as I have already stated is of a complex nature. The landlord was not bound to recognize the sub-division of an old holding. He agreed to do so. The landlord was not bound to recognize the transferable occupancy holding but he agreed to do so and he was entitled to receive consideration for these concessions made by him, and for aught we know the parties, made the contract with a full knowledge of the circumstances and Rs. 15-7-0 was agreed to be the true rent payable for the jama created. There is no principle upon which a party to a contract allowing the contract to stand and enjoying the benefit of that contract himself can say when he is sued for the enforcement of one of the terms of the contract that he is entitled to retain the benefit of the contract but is not bound by one of its terms at a time when the right to get either rescission or reformation of contract has been barred. The cases in which a party to a contract was held not to be bound by it without setting aside the contract where the cases when the contract was absolutely void in toto. See the cases of Banku Behary Shaha v. Kristo Gobindo Jourdar (1903) 30 Cal. 433 and Sunni Bibi v. Siddik Hossain (1918) 29 C.L.J. 55. I am, therefore, of opinion that it was not permissible to the defendant to plead that he was not bound by the statement of rent in the contract.

6. Then again it is difficult to see how this contract contravenes the terms of

Section 29 of the Bengal Tenancy Act. In this case a fresh rent was settled for a new tenancy. There is no question of enhancement of the rent of an existing holding here. That tenancy so far as Samir was concerned came to an end. This is not a case of enhancement of rent of an existing holding. The present suit was not for the enhanced rent but for the recovery of rent at the rate of Rs. 15 70 which the tenant agreed to pay for new holding created in the circumstances already stated.

7. On these grounds, I think the judgment of the learned Subordinate Judge cannot be maintained. In the result the plaintiff will be entitled to a decree for rent at the rate mentioned in the kabuliyat. The appeal is decreed with costs in all the Courts. Appeal accepted.