

(1917) 05 CAL CK 0010
In the Calcutta High Court

Sivanarayan Mukhopadhyaya

APPELLANT

Vs

Bhutnath Guchait and Another, Rasik Patra and Others

RESPONDENT

Date of Decision : 30-05-1917

Acts Referred:

Citation : 45 Ind. Cas. 289

Hon'ble Judges : Walmsley, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for recovery of arrears of rent. The case for the plaintiff is that rent is payable at the rate of Rs. 77-10-0 per annum for the disputed holding, which comprises 25 bighas 18 cottafis and 2 chhataks of land. The defendants allege that the area comprises two classes of land, namely, 3 cottahs and 7 chhatvks of nihaja lands, for which a rent of Re. 1 is payable and 25 bighas 14 cottahs and 11 chhataks of hajabad lands, for which a rent of Rs. 76-10-0 is payable. It is thus clear that there is no dispute between the parties either as to the area or the annual rent payable in respect thereof. The defendants, however, set up a customary right to abatement of rent on account of the hajabad lands. They assert that the nihaja lands are free from inundation and are always subject to payment of rent, while the hajabad lands are liable to inundation and are exempt from payment of rent when the crops thereon are destroyed by inundation. They allege that this custom has prevailed in the estate of the plaintiff as also in adjacent estates from time immemorial and from generation to generation. The custom is formulated in the following terms in the written statement: In the years of inundations, the Zemindar never gets rent on account of the hajabad portions, nor do the tenants pay them; in the years of inundations, the tenants only pay rents for the nihaja portions." The defendants assert that, during one of the four years for which rent is claimed, there was inundation and they are entitled to reduction of rent, not as a matter of favour but on the basis of customary right. On these pleadings, the point arose for determination, "whether there is any custom in Mauza Kumdhara (where the defendants' lands are situate) of remitting rent in the years in which

there is *haja* or inundation." The Courts below have found on this question in favour of defendants and have partially decreed the claim accordingly. On the present appeal, the decision of the District Judge has been assailed on the ground that the custom alleged is unreasonable and uncertain and that there is no evidence to show that it is compulsory on the landlord to allow abatement of rent on account of inundation.

2. It has not been disputed before us on behalf of the tenants that the alleged custom, in order that it may be deemed valid in law, must be proved to be reasonable and certain [Tyson v. Smith (1838) 9 A E 406 : 1 P. and D. 307 : 1 W.W. and H. 749 : 112 E.R. 1265 : 48 R.R. 539 and Mahamaya Debi v. Haridas Haldar 27 Ind. Cas. 400 : 42 C. 455pc : 19 C.W.N. 208 : 20 C.L.J. 183]. The landlord-appellant urges that the custom is unreasonable. As explained in the second of the two cases just mentioned, if the validity of a custom is challenged on the ground that it is against reason, the reason referred to is not to be understood as meaning every unlearned man's reason, but artificial and legal reason warranted by authority of law. Consequently, when it is said that "a custom is void because it is unreasonable," what is meant is that the unreasonable character of the alleged custom conclusively proves that the usage, even though it may have existed from time immemorial, must have resulted from accident or indulgence and not from any right conferred in ancient times [Salisbury v. Gladstone (1861) 9 11. L.C. 692 : 34 L.J.C.P. 222 : 8 Jur. (N.S.) 625 : 4 L T. 849 : 9 W.R. 930 : 11 E.R. 900 : 131 B.R. 403]. It is obvious that a custom which is prejudicial to a class and is beneficial only to a particular individual is repugnant to the law of reason. On this principle, it has been ruled that a custom in a manor that the commoner cannot turn in his cattle until the lord has put in his own, is bad, for it is injurious to the multitude and beneficial only to the lord [Tanistry's case (1674) Dav 29 : 60 E.R. 516.]. Similarly, it is no good custom that the lord of the manor shall detain a distress taken upon the demesne till a fine at his will is paid for the damage. Various other instances of customs between landlords and tenants, which have been considered unreasonable and consequently unenforceable in law, will be found collected in Viner's Abridgment (Volume VII, pages 180-185, Customs E, G.). The test applied is whether the custom would have a lawful commencement. Now, in the case before us, the custom pleaded is that the rent must be abated when the lands are inundated; in other words, the entire rent for the *hajabad* lands must be remitted, irrespective of the extent of the destructive effect of the inundation on the crops. The alleged custom is obviously unreasonable. It is also uncertain, if the landlord is bound to grant a remission without reference to the actual effect of the flood on the holding. The custom pleaded is thus of a very vague character, and, read literally, would lead to this ridiculous and unreasonable result that the entire rent for what is called the *haiabad* lands must be suspended irrespective of the extent of the flood or its actual destructive effect. We are of opinion that the alleged custom does not afford a valid defence to the claim.

The result is that this appeal must be allowed and the suit decreed with costs in all the Courts. This judgment will govern the other appeal in which a similar order will be drawn up.