

(1901) 05 CAL CK 0007

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1645 of 1899

Sri Narain Thakur and others

APPELLANT

Vs

Maharaja Sir Luchmeshwar Singh Bahadoor

RESPONDENT

Date of Decision : 17-05-1901

Acts Referred:

Citation : (1901) 05 CAL CK 0007

Judgement

1. This is an appeal against a decision of the Subordinate Judge of Mozufferpore, dated the 6th of May 1899. The proceeding, out of which this appeal arises, is an application under sec. 158 of the Bengal Tenancy Act for determination of the incidents of a tenancy. The landlord applied to have the incidents of the Appellants' tenancy determined, and they were determined by the Munsif. The Munsif, however, did not confine himself to determining the rent payable by the tenant at the time of the application, but went further and found, after measurement, that the tenant was in possession of a certain excess area; and he assessed additional rent upon that excess area and found that the rent was Rs. 190-1 1/5 pie.

2. On appeal to the Subordinate Judge this decision of the Munsif was affirmed.

3. The tenant now appeals to this Court; and on his behalf two pleas have been raised : first, that the Court below had no jurisdiction to determine the additional rent for the excess lands; and, secondly, that if it had such jurisdiction, the rent of the excess lands has been determined on a wrong principle.

4. We think that the first of these pleas must prevail, and that therefore it is unnecessary for us to consider the second plea. It appears to us that under sec. 158, cl. (d) of the Bengal Tenancy Act what the lower Appellate Court had to determine was the rent payable by the tenant at the time of the application. That is to say, it had to determine what the existing rent was; and it had not to determine what the rent should be (in consideration of the fact of the tenant being in possession of additional lands). If the landlord wishes to apply to have additional rent assessed for any additional area that may be found to be in the

tenant's possession, he can bring a suit under sec. 52 of the Bengal Tenancy Act for the purpose. But in an application for the determination of the incidents of a tenancy, additional rent cannot be assessed. It is clear, from the terms of cl. (d) of sec. 158 of the Bengal Tenancy Act, that the jurisdiction of the Court is confined to recording existing rent, or rent payable at the time of the application. This has been laid down in the cases of *Debendra Kumar Bundapadhya v. Bhupendra Narain Dutt* I. L. R. 19 Cal. 182 (1891), *Rajeshwar Pershad v. Burta Koer* I. L. R. 21 Cal. 807 (1894).

5. We therefore think that the decree of the lower Appellate Court must be modified, and instead of the rent payable by the tenant being recorded at Rs. 190-0 annas 1 1/5 pie, that rent should be recorded at Rs. 109-8 annas 4 pie, which is admitted to be the existing rent payable by the tenant at the time of the application. With this modification we affirm the decree of the lower Appellate Court. The Appellant is entitled to the costs of this appeal. We assess the hearing fee at two gold mohurs.