
(1924) 02 CAL CK 0088
In the Calcutta High Court

Srish Chandra Pal Chowdhury and Others	APPELLANT
Vs	
Debendra Nath Sinha Roy and Others	RESPONDENT

Date of Decision : 01-02-1924

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148A

Citation : AIR 1925 Cal 522 : 79 Ind. Cas. 369

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

Bench : Full Bench

Judgement

Page, J.—This appeal arises out of a suit for recovery of rent alleged to be due. The plaintiff and the defendants are all co-sharers in a patni. The defendant No. 1 is also a darpatnidar in respect of these premises under the patnidars. The suit has been dismissed by both the Courts below on the ground that it is not maintainable in its present form, inasmuch as a suit for relief such as that claimed in these proceedings must be brought by all the co-sharers; or, at any rate, it must be shown that the co-sharers who are made defendants had not joined as plaintiffs are so joined as defendants because they have refused to be joined as co-plaintiffs. The question before us is as to whether or not the view taken by the lower Courts is correct in law. Dr. Kanjilal, who has argued the case with ingenuity, has urged that the decree of the Court below is wrong because the Court below has misconceived the nature of the proceedings which the plaintiff has begun. His first contention is that the plaintiff's claim is independent altogether of the Bengal Tenancy Act and he urges that he is entitled to the relief which he claims under the terms of the contract between the patnidar and the darpatnidar. Now the facts are these. The estate is a temporarily settled estate; when the estate was re-settled an increase of rent was demanded of the zamindar and the zamindar has claimed, as we understand, from the patnidar a proportionate sum in respect of the increased rent. Whether that increased rent was paid under the terms upon which that tenure was held we do not know and it is immaterial to enquire. Assuming that it was paid by the patnidar, the patnidar now claims that he is entitled to recover a proportionate amount of such

increased rent from the defendant No. 1, the darpatnidar under the registered document which created the tenancy. This registered document has not been officially translated; but the parties agreed that the material passages of this document provide: firstly, that the rent to be paid by the darpatnidar is fixed for ever; secondly, "that the road and public works cesses which are now fixed or which may in future be fixed, and any other new amount or payment that may be fixed, also whatever is payable by the darpatnidar according to law, these sums the darpatnidar is liable to pay to us over and above the jama." The validity of the first ground taken by Dr. Kanjilal depends upon the true construction of these passages. In my opinion, the above passages mean that the rent as rent is fixed for ever, but that road cess and public works cess or any other rate or assessment of the same kind, whether payable now or payable in the future, will be paid by the darpatnidar to the patenidar. I come to this conclusion by applying the ordinary rules of construction which are applicable to such a clause as that before us. Where, as here, we find a sum, like the sum fixed for rent, which is specifically dealt with, and afterwards special terms followed by a general clause, the general clause is taken to be referable to the subject-matter specifically referred to immediately before it; or, in other words, the rule which is to be applied is the rule ejusdem generis. For these reasons, in my opinion, it was not permissible for the landlords to vary the rent which had been fixed under the tenancy by applying to the rent the general words which follow road-cess and public cess, etc., "and any other new amount or payment that may be fixed." On the first point, therefore, the appellant fails.

2. Dr. Kanjilal has, further, contended that if the landlord was not entitled to claim this increased rent under the contract of tenacy, it was inequitable that the darpatnidar should escape paying his proportion of the increased rent which fell upon the patnidar. That may be unfortunate; but in future the patnidar must be more careful to see that his legal rights are protected by the terms of the document through which he creates a tenancy. A mere moral claim cannot create a legal right. Therefore, in my opinion, the second ground upon which the appellant relies is without foundation.

3. Dr. Kanjilal took up a third position, namely, that assuming that the plaintiff had no right in law or in equity to recover the sum as increased rent, he was entitled to recover the same as arrears of rent u/s 148-A of the Bengal Tenancy Act, and that in such a case the claim would be outside the ambit of Section 188. Whether this sum is to be regarded as arrears of rent or enhancement of rent must depend upon the terms on which the tenancy was created. Having regard to what I have already said with respect to the construction of the registered document of tenancy, it is clear that these sums are not arrears of rent because they are sums claimed in respect of rent which, under the contract as it stands, the landlords are not entitled to recover. In these circumstances it is admitted by the learned vakil that his claim must rest on Section 192, Bengal Tenancy Act. But in my opinion the right which he claims is not given to him under that section. The only right which is granted to him u/s 192 is conditional upon his

fulfilling the conditions set out in Sub-sections (a) and (b). He has a right to apply to the Revenue Officer to fix a fair and equitable rent for the land in accordance with the provisions of the Bengal Tenancy Act. Whether or not he has such a right, it is not necessary for us to determine, because this is not a suit which is based upon a fair and equitable rent fixed by the Revenue Officer after an application u/s 192. It follows, therefore, that neither at common law, nor in equity, nor under the Bengal Tenancy Act, is the plaintiff entitled to recover the increased rent which he has claimed in this proceeding. The result must be that the appeal fails. It is to be observed, even assuming that the plaintiff had been able to establish a claim u/s 192, that the suit in its present form would not be maintainable by reason of the provisions of Section 188. That would be clearly so on principle, and it has been finally settled in that sense by the Judicial Committee of the Privy Council in *Jatendra Nath Chowdhuri v. Prosonna Kumar Banerjee*(1911) 38 Cal. 270. In these circumstances, in my opinion, the appeal fails and must be dismissed with costs.

Suhrawardy, J.

4. I agree.