

(1927) 01 CAL CK 0011
In the Calcutta High Court

Sukumari Mitra

APPELLANT

Vs

Kinu Mandal and Others

RESPONDENT

Date of Decision : 14-01-1927

Acts Referred:

Citation : AIR 1927 Cal 924

Hon'ble Judges : Rankin, C.J.; Mallik, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case the question arises whether the plaintiff landlord is entitled to an enhancement as against the defendant of the rent of the tenancy. At the trial Court the plaintiff referred to a kabuliat but it was not until the case came before the Court of appeal that the kabuliat was laid before the Court; and in my judgment, the first question before us is to construe this kabuliat and find out what it means.

2. There are two clauses which require careful attention. It is quite clear that the tenant held for a jama under the landlord of Rs. 6-8 annas. It is quite clear that the rent had been changed and it is quite clear that the object of this kabuliat is to increase the rent by 14 annas to the sum of Rs. 7-6 annas; and what is stated is that this Rs. 7-6 annas is in respect of about 3 pakhis of land as per boundaries of the different lots given below.

3. Now, if the document had stopped there that would have been a very plain case indeed. It would have been as clear a case as could be imagined of a kind that is generally known as a consolidated jama and it would have been quite hopeless for the landlord to expect to get an increase of rent for additional area without proving that the tenant was in occupation beyond the specific boundaries which were there laid down. Now, that is a fact which it seems quite probable was noticed by whoever drew up this document or assented to this document, and a little later in the document, after a reference to different kists, there comes this sentence (the whole dispute in the case to my mind is as to its meaning):

when you would measure the lands we shall pay rent, without any objection, for lands found out by your measurement, in accordance with the prevailing rate of tenants holding similar class of lands.

4. It seems to me that the Court has to ask itself-Does that mean that if at any time there is a measurement and the tenant is found to be cultivating lands outside the boundaries he is then to pay the agreed jama of Rs. 7-6 annas for his original area plus the prevailing rate for the additional amount, or does it mean that it is to be at the option of the landlord to have the whole thing measured and accurately ascertained "and to have the jama fixed for the whole thing at the prevailing rate; in other words, superseding the arrangement as to Rs. 7-6 annas altogether. Now, it is not at all easy to make up one's mind as between those two constructions. The document to my mind is highly ambiguous, but it does seem to me that if you want to find out whether a tenant has gone beyond certain boundaries you would not do it in a case like this by measurement. At the time of this kabuliat no measurement was made. The reference is to boundaries and if you want to see whether the tenant strayed beyond those boundaries you will do that by comparing his present holding with the boundaries; but the measurement would be of no service in this case for the purpose of ascertaining whether or not there is an excess. The only suggestion that could be made of that sort would be to see whether or not the land, was more than about 3 pakhis of land. I think, on the whole, that the best construction of this document is to say that it means that if the landlord insists upon having a measurement he may do so and then when he does so the whole thing is to be reassessed on the basis of the prevailing rate for lands of the same plots; in other words, I read this document as being a contract by which the tenant goes on for the present at a fixed jama for a fixed land but there is a right in the landlord to alter that position and to claim prevailing rate for the actual amount of land in the tenant's possession. That is certainly not a hard bargain because the landlord under that can get rent, for no more than the tenant is actually occupying. What is more, he can get no higher rate than other tenants already pay. There can be no doubt whatever that that is a very reasonable bargain to make. In my judgment, that construction is rather more in agreement with the words used than the other possible construction. That being so and as the plaintiff cannot ask for more in this appeal than what he obtained from the first Court, the decree of the first Court ought to my mind to be restored.

5. Under this contract the prevailing rate is the prevailing rate at the time and consequently we do not really have to enquire whether there is any ground for saying that the commissioner took three years' average or did not take it. We are quite satisfied that Rs. 2-2 annas per pakhi is a good and valid finding with reference to the prevailing rate and not in any way unjust.

6. For these reasons I am of opinion that this appeal must succeed.

7. The judgment and decree of the lower appellate Court must be set aside and those of the Court of first instance restored and affirmed with costs here and in

the lower appellate Court.

Mallik, J.

8. I agree.