

(1937) 08 CAL CK 0027
In the Calcutta High Court

Surendra Nath Mondal and Others

APPELLANT

Vs

Bhudar Chandra Safui and Others

RESPONDENT

Date of Decision : 19-08-1937

Acts Referred:

Bengal Tenancy Act, 1885 — Section 52

Citation : AIR 1938 Cal 690

Hon'ble Judges : R.C. Mitter, J

Bench : Division Bench

Judgement

R.C. Mitter, J.—This appeal is on behalf of defendants 3 and 4 who are the heirs of one Ramdas Mandal. The questions raised in this appeal are two in number, namely (1) what is the amount of rent which the defendants are to pay for the period in suit, namely for the years 1336 to 1339 B. S. and (2) whether the tenancy which is described in the plaint has been split up into two tenancies, one belonging to defendants 3 and 4 and the other belonging to defendants 1 and 2. In the year 1889, a potta was granted by the predecessor-in-interest of the plaintiffs to two persons Fatu Safui and Ganesh Mandal. The land mentioned in the potta was 130 bighas and the rent was fixed at Re. 1 per bigha. Defendants 1 and 2 are the heirs of Ganesh Mandal. Defendants 3's and 4's father Ramdas purchased the interest of Fatu Safui. In the year 1909 the landlords instituted a suit for increase of rent on account of increase in area. That suit ended in a compromise decree. The tenants admitted that the area of the tenancy was then 170 bighas so far as the plaintiffs' share was concerned and the tenants agreed to pay rent at the rate of Rs. 170 per year. In 1931 the Record of Rights prepared under Ch. 10, Ben. Ten. Act, was finally published and the amount of land found to be in possession of the defendants under the plaintiffs was recorded to be 104 bighas only.

2. In the suit out of which this appeal arises, the plaintiffs have claimed rent at the rate of Rs. 170 a year. Only defendants 3 and 4 contested the suit and they said that the plaintiffs are only entitled to recover rent at the rate of Rs. 104 a

year on the basis of the land actually in the possession of the tenants defendants, at the rate of Re. 1 per bigha mentioned in the potta of 1889. Defendants 3 and 4 further stated that the tenancy had been split up into two, one held by them and the other by defendants 1 and 2, the shares of each set being half and half. They say that they are bound to pay rent at the rate of Rs. 52 a year for the tenancy so split up. They further pleaded that they had paid whole of the rent in respect of their separate tenancy. Both the Courts below have overruled the defence on both the points. Now the case before me has been presented on the first point in the following manner : Mr. Ghose says that as the area in possession of the tenants is only 104 bighas, that area must be taken to be the area of the tenancy and in accordance with the provisions of Section 52, Ben. Ten. Act, his clients are entitled to a deduction of rent on account of the decrease in the area of the tenancy. He further says that in any event, inasmuch as the tenants are in possession of 104 bighas only, the landlords can on equitable principles recover only at the rate of Rs. 104 per year. In this part of the argument the position is assumed for the purpose of argument only that there has not been any splitting up of the tenancy into two parts. In my judgment this contention cannot be given effect to. Section 52, Ben. Ten. Act, says that if there is a decrease in the area of a tenancy, the tenant would be entitled to abatement of rent; if there is no decrease in the area of the tenancy but the tenant is actually in possession of a lesser area, the case cannot come u/s 52 of the Act. In this case we have the decree of the year 1909 which shows that the area of the tenancy in 1909 was 170 bighas. Simply because the tenants are in possession of a lesser area, it cannot be concluded as a matter of law that the area of the tenancy is the same as the area actually in possession of the tenants. The lesser area in their possession may be accounted for by their having lost the balance of area by dispossession either by the landlord or by a neighbour. In fact in the Courts below defendants 3 and 4 set up the case that they had been dispossessed of the balance of the area by the landlords. If they had been able to establish that position, certainly they would have been entitled to abatement of rent, not total suspension as the letting was on the basis of area. But the Courts below have arrived at the finding that the tenants have failed, the onus being on them to prove dispossession by the plaintiffs, their landlords. In view of this finding that the area of the tenancy is not 104 bighas but 170 bighas, the first point must be overruled.

3. Mr. Ghose says that the whole village belongs to the plaintiffs and their co-sharers and all the neighbouring tenants are the tenants of the plaintiffs and their cosharers. The balance of 56 bighas must be taken to be in possession of other tenants of the plaintiffs and their cosharers; and if that be so, he says that on the equitable principles the landlords are entitled to claim rent on the basis of possession. I cannot see how the principles of equity can be invoked in this case. That is a vague expression and a very convenient expression used in argument in many cases to hide the correct principles of law. I do not understand therefore what is meant by equitable principle so far as the facts of this case are

concerned. The law is that a landlord or a lessor is bound to put his tenant in possession. If he fails to put his tenant in possession of the whole of the demised premises, he can only get rent for so much of the demised premises of which he had put his tenant in possession. If he has discharged that duty-and in this case the proceedings of the year 1909 show that the tenants were actually in possession of 170 bighas of land, his duty is to maintain the possession of the tenant against all lawful evictions; the landlord's duty does not extend to protect the tenant from unlawful evictions, that is to say the evictions by persons who have not got any title or who have not derived any title from the landlord. In this case there is no suggestion that the landlord had let out any portion of this tenancy to any of his tenants of the said mouja. If any of his tenants in such circumstances on their own initiative had dispossessed the defendants of any land of their tenancy, it is for the defendants to recover the same from their dispossessors. If they do not choose to do so, they cannot on any principle of law whatsoever claim abatement of rent. I accordingly hold that the judgment of the lower Appellate Court which has decreed the plaintiffs' claim at the rate of Rs. 170 per year is a correct judgment.

4. Regarding the question of splitting up, the position stands in this manner. In the settlement record, there is one tenancy recorded in the names of defendants 1 to 4 at the rate of Rs. 170 per year. The presumption therefore afforded by the entry in the settlement record is against the contention of defendants 3 and 4. For the purpose of rebutting the entry in the Record of Rights they produced four dakhilas (Exs. A to A-3) granted by the Gomastha of the plaintiffs. The lower Court has observed that there is no evidence showing that the Gomastha who granted those dakhilas had any authority from the landlords to split up the holding. That finding would be quite sufficient to dispose of the contention of defendants 3 and 4 that the tenancy had been split up into two. But apart from the said finding, I do not see how the dakhilas Exs. A to A-3 can support the case of splitting up. In the dakhilas the rent of the tenancy is mentioned as Rs. 170 and what is more important, and is the distinguishing feature of this particular case, is that the names of the tenants are shown to be Ganesh Mandal and Ramdas Mandal, that is to say the dakhila shows that the tenancy belongs jointly to two persons, Ramdas and Ganesh, and not that there are two tenancies one belonging to Ganesh and the other to Ramdas. This is the distinguishing feature in this case, which distinguishes the case cited before me, namely the case in *Abinash Chandra v. Purnananda Khan* (1913) 18 CLJ 174. I accordingly hold that the right construction has been placed by the Court of Appeal below on the documents, Exs. A to A-3, and that even if a wrong construction had been placed upon them, that would not have raised a question of law. In fact in the judgment delivered by Jenkins C. J. in *Abinash Chandra v. Purnananda Khan* (1913) 18 CLJ 174 referred to above, he treated the construction of dakhila which has been put forward in support of the case of splitting up as a question of fact. In that case the first Appellate Court on the construction of the said, dakhila held that there was a splitting up. Chatterjee J. who tried the case singly construed the dakhila

in the same manner as had been done by the first Appellate Court. When the matter came up on Letters Patent appeal, Sir Lawrence Jenkins C. J. said that the question raised in the appeal was concluded by the findings of fact of the first Appellate Court. This case supports the view that I have taken, that even in a case of splitting up where the case is put forward on a dakhila granted by the landlord, the question of construction of the dakhila would be a question of fact on the principle which has been formulated in a series of decisions that the misconstruction of a piece of documentary evidence does not raise a question of law. For these reasons I dismiss the appeal with costs.