

**(1921) 12 CAL CK 0017**  
**In the Calcutta High Court**

Yakub Ali Chowdhuri

APPELLANT

Vs

Rai Raj Kumar Dutta Bahadur

RESPONDENT

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**Date of Decision :** 14-12-1921

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 105, 105A, 50

**Citation :** 65 Ind. Cas. 527

**Hon'ble Judges :** Suhrawardy, J;Cuming, J

**Bench :** Division Bench

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**Judgement**

1. The plaintiff respondent brought a suit against the appellant, who is his tenant, under Sections 105 and 105A of the Bengal Tenancy Act for enhancement of rent, u/s 7 of that Act. Both the Courts below have allowed the enhancement prayed.

2. The facts are that, in 1839 and 1840, two kabuliyats were executed by the predecessor of the defendant in favour of the predecessor of the plaintiff in respect of two tenures which were subsequently amalgamated and became one tenure held at a jama of Rs. 276 and odd. These kabuliyats are silent as to the liability of the tenure for enhancement of rent. It appears that rent has been paid since the date of these kabuliyats up to the present time at the rate mentioned therein. Subsequently, in 1918, the Record of Rights in respect of these tenures were finally published in which the tenures were mentioned as permanent at fixed rate. The Courts below have held that the kabuliyats produced by the plaintiff sufficiently rebutted the presumption attached to the entry in the Record of Rights. This finding has been challenged in this appeal.

3. We are inclined to hold that the question whether the presumption of the correctness of the Record of Rights has been rebutted by these kabuliyats is more a question of fact than of law. But we have allowed the appellant to argue the case in order to show that the Courts below have misread the documents.

4. The learned Pleader for the appellant contends, in the first place, that as the

kabuliyats do not mention that the tenures are liable to enhancement of rent they do not sufficiently rebut the presumption in favour of the correctness of the Record of Rights. It is argued, on the other hand, on the authorities of the cases of Upendralal Gupta v. Jogesh Chandra Roy 38 Ind. Cas. 56 : 22 C.W.N. 275 and Jogesh Chandra Roy v. Makbul Ali 54 Ind. Cas. 850 : 30 C.L.J. 140 : 23 C.W.N. 945 that in this country every tenure, whether permanent or otherwise, is subject to the incident of enhancibility of rent. We accept the respondent's contention and hold that the present tenures are not exempted from this ordinary incident of such tenures.

5. It is next contended that, at a subsequent time, these two tenures were amalgamated into one and there might have been creation of a new tenancy on fresh terms, one of which might have been fixity of rent and as the entry in the Record of Rights must be presumed to be correct on the date of the publication, namely, the 8th February 1918, it is incumbent on the landlord to prove by evidence that nothing happened between the creation of the tenancy in 1840 and the date of the publication of the Record of Rights to vary the incident that the rent of the tenures was enhancible. We do not think that this is the correct way of looking at the question. The plaintiff has proved that at the inception of the tenancy there was no condition excluding the tenure from the operation of the ordinary liability for enhancement of rent, and the Courts below were justified on this evidence to conclude, without any evidence to the contrary, that the same state of things existed on the date of the publication of the record. We further notice that this point was neither raised in the Courts below nor in the grounds of appeal taken in this Court.

6. It is also argued on behalf of the appellant that the rent having been paid for over 80 years at a uniform rate it should have been held that the rent was fixed in perpetuity. We are not convinced that the mere fact of payment of rent at a uniform rate for any number of years, apart from the presumption that can be raised u/s 50 of the Bengal Tenancy Act, raises any presumption of fixity of rent [Buzlul Karim v. Satish Chandra Giri 10 Ind. Cas. 325 : 13 C.L.J. 418 . 15 C.W.N. 752.] It further appears that these kabuliyats were not produced before the Settlement Officer at the time of the publication of the Record of Rights and there is no material on the record to show on what basis the entry in the khatian was made.

7. It is lastly argued that the kabuliyats should not have been admitted in evidence as they were not produced in Court from proper custody. We do not think that this contention ought to prevail. In the Court of first instance, when these documents were tendered by the plaintiff, they were received in evidence without any objection by the defendant. The lower Appellate Court held that they came from proper custody inasmuch as the first witness of the plaintiff got them from the plaintiffs' Record-keeper and produced them in Court. These documents were in the custody of the plaintiff as they ought to have been and they were produced from his record-room by one of his officers. In these

circumstances they must be taken to have been produced from proper custody.

8. No objection has been taken in this appeal to the rent fixed by the lower Appellate Court which finding is, therefore, affirmed.

9. All the points taken in the appeal having failed, this appeal is dismissed with costs.