

Privy Council Appeal No. 114 of 1917.
Bengal Appeal No. 1 of 1916.

The Port Canning and Land Improvement Company, Limited - *Appellants*

v.

Srimati Katyani Debi - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 19TH JUNE, 1919.

Present at the Hearing :

VISCOUNT CAVE.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

This appeal arises out of a suit brought by the plaintiff Company in the Court of the First Subordinate Judge of the 24 Pergunnahs in Bengal for the enhancement of the rent of a tenure held under them by the respondent. The Subordinate Judge dismissed the suit, holding that the rent of the tenure was not enhancible; his judgment was reversed on appeal by the District Judge. On second appeal the High Court of Calcutta came to the conclusion as an inference of law on the documentary evidence and the conduct of the parties, that the view taken by the Subordinate Judge was well founded, and it accordingly set aside the District Judge's order and restored that of the first Court dismissing the suit.

The plaintiff Company, a Syndicate, was formed in Bombay with the object of acquiring from Government grants of land in the Sunderbun Jungle Tract and reclaiming the same. The procedure that was adopted for the purpose was to carve out the land granted to them by Government into a number of subordinate tenures, to the holders of which was entrusted the actual work of reclamation and the settlement of ryots on land so reclaimed. It would appear from the record that the Syndicate

ordinarily gave some pecuniary assistance towards the reclamation, but in the instance in dispute they waived the payment by the tenure-holders of the usual premium or *salami* on account of the heavy cost of the work.

The plaintiff Company, it is admitted, carried on their work in the Sunderbun Tract through an agent named Eduljee Cowasjee, who was in their service for a number of years prior to 1885, and continued in that capacity until 1893. The Power of Attorney given to him, which bears date the 20th October, 1876, is of the usual character. It gives him, naturally under the circumstances, very wide powers. In exercise of his authority he granted to a number of people collectively, called Teacher & Co., a tenure consisting of 1,000 biggas of land, roughly 333 acres, which subsequently was split up into three lots, one of which, consisting of 193 biggas, is now held by the defendant respondent in the present appeal. The plaintiffs admit that the tenure was *mouroosi*, but they allege that though permanent and heritable, it did not carry with it the incident of fixity of rent as alleged by the respondent. The plaintiff company further alleged that the counterpart of the lease granted to the tenure-holders was lost.

In support of her contention that the tenure then created was non-enhancible, the defendant produced a memorandum executed by Eduljee Cowasjee, which she alleged set out the terms of the contract. To the reception in evidence of this memorandum the plaintiff Company objected, contending that, as it was unregistered, it was inadmissible under sections 17 and 47 of the Indian Registration Act.

The Subordinate Judge overruled the objection holding that it was neither a lease nor an agreement for a lease, but only a memorandum relating to a previous and completed transaction by which the tenure-holders had obtained possession of the lands. The learned Judges of the High Court take the same view. Their Lordships are unable to concur with the judgment of the High Court on this point in face of the admission by Ramtrahi Chakravarti, one of the tenure-holders, that he got into possession under the memorandum, which he regards as his lease. Being unregistered, it is inadmissible in evidence, and no effect can be given to it; but the respondent relied also in support of her case on an entry in the settlement books of the plaintiff Company which is in these terms:—

“ Rent free from 1291 to 94 B.S.

“ 4 Annas in 1295.

“ 8 Annas in 1296.

“ 12 Annas in 1297.

“ 17 Annas in 1298.”

The District Judge does not appear to have given much attention to this document, but the Subordinate Judge and the High Court both attach to it, and rightly, in their Lordships' opinion, great importance in judging of the character of the tenancy which Eduljee Cowasjee acting as the Company's agent created in 1885. The document is found in the books of the plaintiff

Company, and if it is open to the construction for which the respondent contends, taken in conjunction with other circumstances, their Lordships can arrive only at one conclusion, that the claim of the plaintiff Company must fail.

Before proceeding further their Lordships desire to observe that the plaintiff Company in 1895 put up the tenure in question to sale for arrears of rent. They admit that it is heritable (*mouroosi*), and by their conduct in trying to bring it to sale, they admitted it to be transferable; in other words, that it is a permanent, heritable, and transferable tenure. The only question is whether the rent is fixed as the defendant alleges, or is liable to enhancement from time to time under the provisions of the Tenancy Act. Ordinarily the two admitted characteristics would create a presumption in favour of the tenant, and throw on the plaintiff the onus of showing that the tenure is wanting in the characteristic of fixity of rent. But assuming that the onus lay on the defendant, their Lordships are of opinion that she has fully discharged it. In the books of the plaintiff Company it is expressly stated that the tenure should not be liable to rent for the first four years. After that it is to carry rent on a progressive scale until in 1298 it reached one rupee one anna. The contract as to progressive rise thus came to an end in 1298, and there is no reference to further enhancement by operation of law. In their Lordships' opinion the clear inference from these facts is that the maximum rent reached in 1298 was the fixed rent of the tenure so long as it lasted. This form of agreement, in the case of reclamation leases, has formed the subject of decision in three cases. In the case of *Golam Ali v. Gopal Lall Thakoor* (9 W.R. 65) Mr. Justice Phear observed as follows:—

“I am led to this [conclusion] in great degree by consideration of the fact that the parties to the contract have carefully provided for a variation of the rent up to a maximum of Rs. 5 per kance, and have yet been entirely silent as to any possibility of variation beyond that amount, and also that they have minutely prescribed the mode in which the excess lands within the given boundaries are to be assessed at rates rising up to the same amount, Rs. 5, but at the same time have made no allusion to any other ground for the enhancement of the jumma to be paid for the land lease.”

This case came up on appeal before the Judicial Committee, and their Lordships agreed with the High Court that the terms of the agreement carried fixity of rent. The words used by the Board in giving their decision on the point are important (15 B.L.R. 125). Their Lordships observed:—

“The *kabuliat* did not contain the term *mukarrari* or the words ‘from generation to generation,’ and the *kabuliat* was one of modern date, and there was not as in *Dhunput Singh's* case any long uninterrupted enjoyment at a fixed, unvarying rent. It was, however, admitted by both parties in argument that the tenure was a permanent one. It is unnecessary for their Lordships to express any opinion on that point, and they therefore abstain from doing so. Looking at the words of the *kabuliat*, their Lordships are of opinion that it was the intention of the parties that in and after the year 1264 the defendant should hold at the fixed rate of Rs. 5 per kance, and that consequently the rent was not liable to enhancement beyond that rate.”

In *Huro Prasad Roy Chowdhur v. Churn Boyragge* (I.L.R. 9 Cal., 505) Mr. Justice Wilson, afterwards Sir Arthur Wilson (sitting with Mr. Justice McLean), dealing with the construction of an agreement of a similar character, expressed himself as follows :—

“Now the question is shortly this. When land is let for the purpose of clearing jungle or other reclamation and on this ground or any other ground mentioned in the lease a reduced rent is provided for the first few years and it is said that the rent is to be at such and such rate, a sum as the full rent, does that mean, as the words seem to import, that the full rent is to be the full rent as long as the tenure subsists, or is such a rent liable to enhancement under the provisions of the rent law. We agree with the lower Appellate Court in thinking that the decision of the Privy Council in *Soorasoondery Dabee v. Golam Ali* (15 B.L.R., 125 note), is an authority for holding that the former view is the true one, and that in the present case the rent cannot be enhanced.”

Counsel for the plaintiffs were asked if they knew of any case in which a contrary view had been taken, and they frankly admitted that they had found none. Nor are their Lordships aware of any.

The conduct of the plaintiff Company supports the respondent's case. There can be little doubt that the plaintiff Company must have been fully aware of their agent's transactions; not only is there a presumption that he must have faithfully carried out his duties and kept them informed of his dealings with the tenures, but there are the outstanding facts that they received an unvarying rent for nearly seventeen years; that when the original tenure was split up they confirmed to two of the grantees two of the plots at the fixed rent reached in 1298, and that they allowed the defendant to raise permanent structures on the tenure and to materially alter its agricultural character, although they must have known of her acts, as they had admittedly a branch office at Mutla not far from where the lands lay.

On the whole their Lordships are of opinion that the judgment of the High Court is correct, and that this appeal should be dismissed with costs.

Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

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COMPANY, LIMITED

v.

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DELIVERED BY MR. AMEER ALI.

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