

Privy Council Appeal No. 43 of 1925.

Bengal Appeal No. 96 of 1923.

Krishnendra Nath Sarkar, since deceased (now represented by
Surendra Nath Sarkar and another), and others - - *Appellants*

v.

Rani Kusum Kamini Debi, since deceased - - - *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 NOVEMBER, 1926.

Present at the Hearing :

LORD ATKINSON.

LORD CARSON.

SIR JOHN WALLIS.

[*Delivered by* LORD CARSON.]

The suit was brought by the plaintiffs (respondents) as the Zaminders and owners of certain lands, against the tenure holders thereof, to enhance the rent of the tenure created in favour of the latter under a jote pottah, dated 5th January, 1870. The question for determination in the appeal is whether the rent of the said tenure was, as the appellants contend, fixed by the pottah in perpetuity or was, as the respondents contend, not fixed in perpetuity, but was liable to enhancement in accordance with the provisions of the Bengal Tenancy Act, Act 8, 1885, section 7, sub-section 1.

The said pottah, which was in the Bengali language, was granted by the predecessor of the respondents, and the material part of it upon which the rights of the parties depend is as follows :—

“ This pottah is granted in respect of the above-mentioned mouzah and the aforesaid jotes by fixing the annual rent thereof at Rs. 418.9.15 gundas in the Company’s coin as per details in the schedule, and you also

submit a kabuliyat of your own accord. You shall pay the rent year after year according to the kistibundi given in the schedule below. Should you make default in payment of the kists, you shall pay the rents in arrear with interest according to law. You and your sons and grandsons, etc., in succession, will remain in enjoyment and possession by keeping the boundaries intact as they have been from before. All profits and losses shall be yours, and you shall on no account be competent to pray for a reduction of the rent. You shall abide by the survey and settlement of rent to be made by me when necessary. If you should make any plea of payment unsupported by dakhilas, the same shall be rejected. You shall not do any improper act, and should you do any, you shall be answerable for it. Should any new tax be imposed by Government, you shall pay the same separately in addition to the rent mentioned in the pottah."

The plaintiff-respondents also claimed in the suit the imposition of a fair rent for land alleged to be held by the appellants by encroachment in excess of the lands leased under section 52 of the same Act. As regards this second claim, there was a finding in favour of the appellants by the Subordinate Judge, and the point was abandoned at the hearing of the first appeal. It was not disputed that under the terms of the said pottah the tenure created was a perpetual and hereditary one, having regard to the terms "you and your sons and grandsons, etc., in succession, will remain in enjoyment and possession," etc. This however does not in law involve that the rent specified is therefore fixed in perpetuity, and it was contended that upon the true construction of the pottah there was nothing to show that the rent was fixed in perpetuity, and that the plaintiff-respondents were entitled to sustain their claim for an enhancement of the rent. The whole question therefore turns upon the true construction of the pottah. The Subordinate Judge of Bogra by his judgment, dated the 27th August, 1917, dismissed the plaintiff-respondents' suit with costs, holding on the construction of the pottah that the rent was fixed in perpetuity and was not liable to enhancement. On appeal, however, to the District Judge of Pabna, he, on the 5th April, 1919, delivered judgment and passed a decree setting aside the decree of the Court below, holding on the construction of the pottah that the plaintiff-respondents were not precluded from claiming an enhanced rent, and his judgment was upheld by the High Court of Judicature at Fort William in Bengal by a judgment and decree dated the 16th May, 1923 ; hence the present appeal.

It appears to be common ground that *prima facie* the rent is liable to enhancement on the application of the landlord or to reduction on the application of the tenant, unless either of them has precluded himself by contract from claiming such enhancement or reduction respectively.

The learned Subordinate Judge was of opinion that the grant was clearly intended to create—

"an absolute, hereditary and 'mokurari' tenure, inasmuch as it contains the essential words 'generation to generation,' which have always been considered to have that effect. The expression 'the profit or loss is yours' clearly shuts out the idea of enhancement and indicates to show that the rent is fixed in perpetuity."

Apparently the word usually employed in creating a fixed rent in perpetuity is the word "mukurari," though no doubt the absence of such word is not conclusive if other words are found in the grant which clearly show that such a rent was intended to be created.

The learned District Judge, however, took a different view, holding that, taking the pottah as a whole, there was nothing to show that the landlord had precluded himself from claiming an enhancement of rent. This view was maintained by the two Courts of Appellate Jurisdiction of the High Court of Judicature at Fort William who heard the case.

Briefly stated, the learned Judges, in their respective Courts were unable to find in the grant any words which have, as the word "mukurari" would have, the effect of indicating that the rent was intended to be fixed in perpetuity. On the contrary, they point out that the words following those quoted by the Subordinate Judge, viz., "and you shall on no account be competent to pray for a reduction of the rent. You shall abide by the survey and settlement of rent to be made by me when necessary," indicate that whilst the lessee was precluded from claiming reduction the landlord was specifically maintaining his right to claim enhancement. Their Lordships agree with the opinions expressed by the Judges of the District Court and the High Court respectively, and are of opinion that on the true construction of the pottah there are no terms used from which it can be inferred that the landlord abandoned his right to enhancement, whilst the express provision that the rent would not be reduced seems to negative any such construction. Under the circumstances their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

KRISHNENDRA NATH SARKAR, SINCE DECEASED
(NOW REPRESENTED BY SURENDRA NATH
SARKAR AND ANOTHER), AND OTHERS

2.

RANI KUSUM KAMINI DEBI, SINCE DECEASED.

DELIVERED BY LORD CARSON.

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