Calcutta High Court
Radha Gobinda Banikya Choudhury ... vs Hem Chandra Chakravarty And Ors. on 6 January, 1924
Equivalent citations: 87 Ind Cas 758
Author: Suhrawardy
Bench: Suhrawardy, Cuming
JUDGMENT Suhrawardy, J.

1. The main and substantial ground on which this appeal has been pressed is that the finding of the lower Appellate Court that the pattah in suit created a tenure the rent of which was not liable to enhancement is not correct. The tenure, it appears, was created by the pattah dated the 30th December 1885. It was a nimhowla pattah granted by Rajlakshi Debya (who was the howladar) to the predecessor of the defendants. It begins with the following, words "There was my husband's permission to grant to you nimhowladan pattah in respect of the entire lands and jamas comprised in the said howla at a profit of Rs. 75." Then follow some words which it is not material "to quote and then it proceeds to run as follows: "I grant to you a nimholadari pattah in respect of the entire lands and jamas of the said howla. You shall without objection pay into my office Rs. 102-7-6 being the rent for the howla and Rs. 75 being the amount of my profits the total amount being Company's Rs. 177-7-6 year by year and month by month according to the kists mentioned below." This is followed by the usual recitals in a document of this description with regard to the mode of possession and other matters. The last clause is in the following words: "When Survey and jamabandi are made in respect of (the lands of) the other howladars and nimhowaldars of the said tappa, the nimhowla will be measured and you will get reduction of proportionate area (jigba rakba) according to the practice iri respect of the other nimhowladars, and upon bundobast (Settlement) according to the rates paid for other nimhowlas. if the rent is greater you will pay the same into my office, and if it is less you will get reduction." The learned Subordinate Judge in the Court of Appeal below construing this document with certain other documents executed since its creation has-come to the conclusion that the tenure created by this pattah was one at a fixed rent and consequently dismissed the plaintiff's suit.

2. It is argued before us by the learned Vakil for the appellant that this pottah should be read as not interfering with the general right which a zemindar possesses of enhancing the rent of his subordinate tenure-holders. The proposition of law that the zemindar holding under the Permanent Settlement has a right from time "to time to raise the rent of all rent paying' lands within his zemindari according to the current rate unless he is precluded from the exercise of that right by a contract binding on him or by the law in force is unquestionably correct. See the cases of Bamasoondcry Dassyah v. Radhika Chowdhrain 13 M.I.A. 248 : 4 B. L. R P. C 8 : 13 W. R P. C. 11 : 2 Suth. P. C. J. 293 : 2 Sar P. C. J. 524 : 20 E. R. 544. and Nirod Cliandra Singha Sarma v. Harihar Chakravarti Chowdhury 58 Ind. Cas. 867 : 32, C. L. J. 19 : 24 C. W. N. 874. That being so, the only question that remains for consideration is whether the contract embodied in this pattah precluded the zemindar from exercising that general right which he has of enhancing the rent of lands of his zemindari. The learned Vakil for the appellant has strenuously argued that as there are no words in the contract curtailing or barring the right of the zemindar to enhance the rent of thelands within his zemindari, it must be held that the tenure created under the pattah was one the rent of which was liable to be enhanced. In fact the learned Vakil has gone so far as to argue that unless any express

words are to be found in a document evidencing a contract debar ring the lessor from claiming enhancement of rent in future, it must be held that the tenancy is one in which the rent is liable to be enhanced; and in support of this view reliance has been placed upon the case of Taruck Chander Nundee v. Madhoo Soodan Nandee 5 W R Act X Rul 80. We do not think that the case carries us so far. In all the cases that have been placed before us attempts have been made to construe the particular contracts involved in them and it does not seem to be proper that a contract in one case should be interpreted in the view, taken with regard to another contract which is differently worded and under consideration in another case. In the case of Taruek Chandra Nandy v. Madhoo Soodan Nandy 5 W R Act X Rul 80 the learned Judges found that the pattah was a mourashi pattah but the rent fixed in the lease did not appear to have been fixed and invariable, and they remarked as follows. "There are not in it any such words as these: 'that the rent, shall not hereafter be altered or increased.' It is not laid down that these words are necessary in order to establish fixity of rent. In the" case of Ramdayal Giri v. Midnapore Zemindari Co. Ltd. 7 Ind. Cas. 785 : 15 C W. N. 263 the learned Judges observe at page 265 of the report as follows: "It is true there are in the leases no words which by themselves would bar an enhancement such as are used in formal leases in other parts of the country. But there is the contract of the parties...". We, therefore, consider ourselves relieved from looking for any expression or word, in the document fixing the rent in perpetuity.

3. We are next called upon to consider the general effect of the document. The learned Advocates, for the respondents have argued that the contract is plain enough and gives sufficient indication that what the parties intended was that it should be a mourashi mokarari lease. The words, no doubt, lead to a conclusion very much akin to what is contended for by the respondents. 'The pattah states that the lease was granted by the lessor and according to the wishes of her husband she reserved for herself a profit of Rs. 75 only. The last clause mentions the circumstances in which the rent can be varied 80 that it may be reduced or increased according as on the Survey of the lands of the other howlas and nimhowlas the assets are found to be less or more than the present and fresh Settlements made according to the rates paid for by other nimhowladars. This contingency has not arisen and it is not necessary, therefore, to consider what would have happened if it arose. But the fact remains that the term of the lease as' to enhancement of rent is restricted to the one condition mentioned in it, namely, when the Survey and jamabandi are made in respect of lands of other howlas and nimhowlas of the same tappa. It is argued on behalf of the appellant that it cannot be maintained that because one circumstance is mentioned in which "the rent can be varied it cannot be varied under any other circumstance. On the other hand the respondents contend on the doctrine of expressio inmus est exclusio altruism that the mention of one condition restricts the power of the landlord to vary the rent only to the happening of that event. We are unable to give effect to the contentions' of either side on the mere construction of the pattah before us. We are, therefore, constrained to hold that the lease is not unambiguous in its terms and the interpretations which the parties at-tempt to put upon it are not without some force. The lease, therefore, being ambiguous in its terms, it is necessary to look as to how it was understood by the parties. The facts are that since its creation in " 1855 there has been no variation o rent lip to the present time, i. e., for about 70 years and that the nimhowla in suit was described as a mortgage-bond executed by the nimhowladar in favour of the plaintiffs themselves .in 1898 as well as in the kobala executed by them in favour of a predecessor of the defendants in 1902. It is also in evidence that the plaintiff themselves described the nimhowla in Suit as a mokardri jama in the plaint filed by them in the suit on the aforesaid

mortgage of 1898. These facts were considered by the lower Appellate Court and it came to the conclusion that the lease was a mourashi mokarari lease. The finding thus arrived at by the lower Appellate Court is in the nature of a finding of fact. We think that the conclusion arrived at by the Court of Appeal below was correct and that the lease must be taken to be permanent in character with the rent fixed. In the view that we take of this question it is not necessary to consider the other question raised in the appeal with regard to the procedure adopted in fixing the enhanced rent or to the, inapplicability of Section 7 of the Bengal Tenancy Act to the facts of the present case as was contended for by the respondents.

4. The result is that this appeal is dismissed with costs to the two sets of respondents.

Cuming, J.

5. I agree.