Calcutta High Court
Dhirendra Nath Ghose And Ors. vs Purna Chandra Dutta And Gour ... on 29 January, 1919
Equivalent citations: 51 Ind Cas 904
Bench: Beachcroft
JUDGMENT S.A. No. 95 of 1917.

1. This is an appeal by the landlords, who made an application under Section 105 of the Bengal Tenancy Act for (settlement of rent, and the only question in this appeal is whether the presumption provided for in Section 50, Clause 2, of the Bengal Tenancy Act has been rebutted or not. The Settlement Officer held that it had. The learned Special Judge held that it had not. The existing rent is Rs. 51-9-0 odd. That has been the rent at least from the year 1837. In that year a kabuliyat, which has been found by the Special Judge to be genuine, was executed and the appellants rely on the terms of that kabuliyat to show that the presumption provided for in Section 50, Clause 2, has been rebutted. The learned Special Judge was of opinion that the kabuliyat was merely a recognition of the existing tenancy. He referred to the use of certain words, namely, the words 'Khas Kobala' noted against rent to show that this was merely a recognition of the existing tenancy. Those words mean 'admitted,' they imply that the rent was admitted and they may never be fairly taken to suggest the further point that that was the rent which was being paid before 1837. The learned Pleader for the appellants points to a clause in the kabuliyat whereby the tenant undertakes to pay at what may be found to be the Pergana rate. The clause which immediately precedes that clause is one which provides for the measurement of the tenure, and he argues that whether this kabuliyat may be looked upon as creating a new tenancy or recognition of the existing tenancy, this clause shows that the rent was enhance-able and that, therefore, following the decision in the case of Upendra Nath Ghose v. Dwarkanath Biswas 44 Ind. Cas. 593 ; C.W.N. 322 the enhancement made by the Settlement Officer should be restored. There is this difference between the kabuliyat before me and that in the cited case, that here the tenant merely undertakes to pay at what may be found to be the Perganna rate, whereas in the case reported the tenant undertook to pay at the enhanced rate. This is practically not a very substantial difference because the clause in the kabuliyat before me recognises the possibility of there being an alteration in the rate. Now where there has been a kabuliyat executed providing for an alteration or enhancement in the rate, this may be followed by one of two sets of circumstances The rent may sub-sequndy have been enhanced but not in fact paid, or it may not have been enhanced. Now, if in fact it has been enhanced, the mere fact that it was not paid would not protect the tenant under Section 50, Clause 2, because the question is the rate at which the tenant held the land. From the mere fact that he may not have paid his dues he would not be entitled to pay at the rate at which the rent was actually being paid. But if in fact the rate had not been enhanced, a very different set of circumstances would arise. The position then would be that the land was held for more than 20 years at an unchanged rate and it not being proved that the defendant ever held at any other rate, the presumption must be that he had held at that rate from the time of the Permanent Settlement. I am not prepared to follow the learned Judges when they come to this conclusion that the mere fact that the rent was enhanceable is sufficient to upset the presumption of Section 50, Clause 2. To my mind the question is whether the rent has, in fact, been altered or not and if it has not been altered, then the tenant is entitled to the full benefit of the presumption. This view was also taken in the case of Abhoy Sankar Mozumdar v. Rajani Mandal 47 Ind. Cas. 359 ; 22 C.W.N. 904 ; 29 C.L.J. 371. It is sufficient for me to say that I agree with the

remarks of Richardson, J., in the right hand column of page 909 of that report.

2. That being so, this appeal must be dismissed with costs.

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3. This appeal must follow the result of Second Appeal No. 95 of 1917, in which I have just delivered judgment. The kabuliyat in this case is clearly a recognition of the existing tenancy as appears from the terms of the kabuliyat itself. There is a clause in it showing that the rent was liable to be enhanced, but there is nothing to show that the rent had ever in fact been enhanced. The presumption of Section 50, Clause 2, therefore, applies and had not been rebutted.

4. For reasons given in the other judgment just delivered, this appeal must also be dismissed with costs.