

Calcutta High Court

Rai Nalinakhya Basu Badadur And ... vs Hon'Ble Maharajadhiraj, Sir ... on 23 June, 1916

Equivalent citations: 40 Ind Cas 395

Bench: Fletcher, Teunon

JUDGMENT

1. This is an appeal from the judgment of the learned District Judge of Burdwan, dated the 25th February 1914, modifying the decision of the Subordinate Judge of that place. The suit was brought for possession of certain resumed chowkidari chakran lands by the putnidars against the landlord and the persons with whom he had settled the lands after resumption. Various defences were raised in the suit, but we are not concerned with them in the present appeal. The putnidars held under a document in writing, one portion of which, namely the kabuliat, is before the Court. Both the lower Courts have found that the resumed lands were, in fact, included in the putni lease which was granted to the plaintiffs. Under Section 51 of Act VI (B.C.) of 1870, on an order for resumption being made, "such order shall operate to transfer to such zemindar the land therein mentioned subject to the amount of assessment therein mentioned and subject to all contracts theretofore made in respect of, under or by virtue of which any person other than the zemindar may have any land." That being so, the only question that arises in this appeal is whether, under the terms of the contract which created the putni, the putnidars are liable to pay any additional rent in respect of the resumed lands which both the lower Courts have found were comprised in the putni. The decisions that have been cited before us do not really assist the case at all. In those cases, the facts are not reported and we have not the terms of the contracts creating the putnis in those cases. In this case we have got to construe the contract which is before us and that construction is not assisted by the construction put upon the other leases because we have not got the terms of those leases before us. In the present case there is the finding, which we must assume to be correct, that those lands form part of the lands let out in putni. The rent is a fixed rent and there is nothing to suggest on the terms of this document that in any event a larger or smaller rent is to be paid. In fact the document expressly states that in certain events the land being rendered unfit for use for the purposes for which it was granted, the putnidars would obtain no remission of the rent. There is nothing on the terms of the contract that can possibly suggest that the landlord, in any particular event, is to get any increased rent in respect of the land that is comprised in the putni. What were the terms of the contracts in the cases referred to, we do not know. In this case it is quite clear on the terms of the contract that the landlord is not entitled to get any increased rent with respect to the property let out. That being so, we must set aside the decree of the learned District Judge and restore the decree of the Subordinate Judge. The respondents who have appeared in this appeal must pay the costs of the appellants in this Court as well as in the proceedings in the lower Courts.