Calcutta High Court
Nim Chand Shaha vs Joy Chandra Nath And Anr. on 7 May, 1912
Equivalent citations: 15 Ind Cas 256
Bench: Harington, Mookerjee
JUDGMENT

1. This is an appeal on behalf of the plaintiff in an action for rent. The sole point in controversy relates to the rate at which the plaintiff is entitled to realise rent, in view of Section 48 of the Bengal Tenancy Act. The plaintiff is an occupancy raiyat and the defendants are under-raiyats under him. The defendants were on a previous occasion sued in ejectment; they then pleaded that they held these lands on payment of rent at the rate of Rs. 10 a year. On the present occasion, the plaintiff claims at the rate of Rs. 14 a year. The defence is, that under Section 48 of the Bengal Tenancy Act, he is Dot entitled to claim rent at a higher rate than Rs 35. This contention was overruled by the Court of first instance and a decree was made at the rate of Rs. 10 a year. Upon appeal, the District Judge has allowed the contention of the defendants to prevail. The question raised is apparently one of first impression and the solution must depend upon the true construction of Section 48.

2. The plaintiff has an occupancy-holding which contains 12 kanis and 18 gandas of land. In his lease, the lands are classified and rent is assessed at rates varying from Rs. 2-4 to Rs. 1 a kani the aggregate rent is stated to be Rs. 21-14 a year. The defendants have taken a lease of one of these plots only, the rent whereof was assessed at Rs. 2-4 a kani in the lease of the plaintiff. The contention of the defendant is that under Section 48, Clause (6), the plaintiff is not entitled to recover rent at a rate in excess of Rs. 2-13 a kani. In our opinion, there is no foundation for this contention.

3. Section 48 of the Bengal Tenancy Act provides that the landlord of an under-raiyat holding at a money rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than 25 per cent. It will be observed that the section does not expressly mention the land held by the under-raiyat, but the meaning plainly is that the landlord of the under-raiyat who holds under a money rent is not entitled to recover rent exceeding by more than a quarter the rent which he himself pays in respect of the land let out to the under-raiyat. It has not been disputed that in cases in which the land comprised in the holding of the raiyat is of different qualities and there is no indication to show at what rates the various classes of lands were assessed, Section 48 cannot be made applicable, if only a part of the land has been sub-let to an under-raiyat. But the learned Vakil for the respondent has suggested that where, as here, on the face of the lease of the raiyat, the rates at which the different classes of land were assessed can be determined, the under-raiyat is not bound to pay more than 25 per cent. of the rent assessed with respect to the parcels in his possession. This argument, in our opinion, is based on a fallacy. It cannot be affirmed that the raiyat pays so much rent for any particular parcel. No doubt, for the purposes of the assessment of the aggregate rent, certain rates were taken as the basis of the calculation by the superior landlord. Nevertheless, the raiyat holds the entire land of the holding for the aggregate amount. If he fails to pay any portion of this rent, the entire holding is liable to be sold, and he cannot clearly save any particular parcel out of the holding by payment of the rent assessed upon the land comprised therein. In our opinion, Section 48 applies to cases in which the land held by the raiyat is

coextensive with the land held by the under-raiyat. The section was never intended to apply to cases of the class now before us.

4. We may add that in the course of the argument at the bar, reference was made to the decision of Mr. Justice Giedt in the case of Akhil Chandra Biswas v. Amjad Ali S.A. No. 415 of 1903 (unreported), where a question similar in scope to the one before us, appears to have been raised but not decided; that judgment, so far as it goes, supports the view we take.

5. The result, therefore, is that this appeal is allowed, the decree of the Court below set aside and that of the Court of first instance restored with costs in this Court.