

Privy Council Appeal No. 109 of 1925.

Bengal Appeal No. 22 of 1924.

Srimati Nayan Munjari Dasi - - - - - *Appellant*

v.

Khagendra Nath Das and others - - - - - *Respondents*

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 7TH MARCH, 1927.

Present at the Hearing :

VISCOUNT DUNEDIN.

LORD SHAW.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* VISCOUNT DUNEDIN.]

This suit is raised by the guardian of a female lunatic who is entitled to the property of certain lands at Howrah, against the occupying tenants thereof. The plaintiff alleged that the defendants, now respondents, were tenants at will who had hitherto paid a rent of Rs. 7·8 per mensem. But a notice has been served on them to pay henceforth a rent at the rate of Rs. 3 per mensem per cottah.

The land in extent is, roughly speaking, 22 cottahs, so that the rent demanded is Rs. 66, now alleged to be the prevailing rent of land in the neighbourhood. In the event of the defendants not signifying their willingness to do so, the plaintiff holds herself entitled to evict them.

The plaintiff alleged that no answer had been given, and craved eviction, but alternatively, if eviction was not granted, then a decree declaring that the rent henceforth was to be Rs. 3 per mensem per cottah.

The history of the terms of the tenancy are as follows :—

In 1895 a suit had been instituted by the father of the defendants against the first plaintiff's deceased husband to have him ordained to execute a perpetual lease. This suit was compromised. The terms of the compromise were that for the seven years from 1896–1903 the tenants should pay a rent of Rs. 4·6, and then it continued as follows :—

That after the expiry of the aforesaid stipulated period ending in the month of Chaitra 1309 thirteen hundred and nine B. S., the plaintiff shall possess and enjoy the said land on payment of the then proportionate reasonable ground rent. On the plaintiff agreeing to pay proportionate ground rent of the said land, the defendant shall not be able to settle the said land with any other person ; but if the plaintiff refuses to pay such rent, he shall amicably surrender such land ; if he fails to do so, then the defendant shall be able to eject him from the said land, and the latter (the plaintiff) shall be bound to pay to the defendant such damages as he will suffer on account of breach of the said agreement.

In 1903 the rent was accordingly enhanced to Rs. 7·8, and that was the rent which was paid as at the date of this suit. The position taken by the defendants, now respondents, in this suit was that the true meaning of this clause was to allow one increase only to be made, and that having been made in 1903 the rent must thereafter continue at that figure in perpetuity. Alternatively, they denied that Rs. 3 per mensem per cottah was the prevailing rate in the neighbourhood.

The case was tried in the Court of the Munsiff of Howrah. That Judge settled certain issues, of which three may be mentioned :—

What were the terms of the Solenamah in Title Suit No. 46 of 1895 of the Court of the Second Subordinate Judge, Hooghly ? Have the terms of the Solenamah been fulfilled by the defendants ? If so, can the plaintiff claim any further enhancement of rent or ejectment ?

What is the nature of the tenancy of the defendants ? Is it ejectable ?

• To what relief, if any, is the plaintiff entitled ?

One witness on each side was examined. The witness for the plaintiff said that the prevailing rent for such land was Rs. 3 per mensem per cottah and that he had Collector's papers to show this. No cross-examination was had as to these papers.

The witness for the defence simply denied that this was the proper prevailing rate.

The Munsiff held on the fourth issue that the true meaning of the compromise was that the landlord could enhance the rent after the seven years up to the prevailing rent of neighbouring lands, and that if that was not paid, he could ask for ejectment, but he said he did not consider that there was any proof of what the prevailing rent was. Issue 5 had been settled by this answer to Issue 4 and on Issue 6 he dismissed the suit.

Appeal was taken to the District Judge at Howrah. His view of the compromise decree was that the tenant might ask for one seven-years term at an enhancement of rent, but that

after that the tenancy was a tenancy at will. He accordingly allowed the appeal and decreed khas possession, *i.e.*, he granted ejection.

A second appeal was then taken by the defendants to the High Court. That Court restored the judgment of the Munsiff, holding that the meaning of the compromise term was that so long as rent was paid at the prevailing rate, the tenants were entitled to hold. The question of the rate they dealt with by merely saying that the Munsiff had found that the rate of Rs. 3 was not proved.

Their Lordships are of opinion that the High Court has put the right construction on the compromise decree—that is to say, that the lease is binding so long as the tenants are content to pay the prevailing rent of such land as such prevailing rent may be gathered from what is given for land in the neighbourhood. They could not, however, come to the conclusion that the question of what the prevailing rent truly is has been satisfactorily dealt with. The Munsiff was, they think, too peremptory in deciding that there was no evidence. The evidence of the plaintiff's witness was quite clear, and he said that he had Collector's documents to show that what he was stating was true, and there was no cross-examination on the point.

Their Lordships think it probable that the efforts of the pleaders were too much directed to the extreme position asserted on either side.

The parties have shown themselves very reasonable and have consented to abide by the determination of a person to be appointed by the Court.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed and the case remitted to the High Court for them to appoint an independent person to fix what is the prevailing rent in the neighbourhood and report, and on that report being received the High Court will pronounce a decree accordingly—that is to say, if the defendants are willing to pay they shall continue as tenants, but if not, eviction shall be granted. No parties shall have costs either before the Board or in the Courts below, and any costs already paid must be returned.

In the Privy Council.

SRIMATI NAYAN MUNJARI DAS

2.

KHAGENDRA NATH DAS AND OTHERS.

DELIVERED BY VISCOUNT DUNEDIN.

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