

NabIn Chandra Chakrabarti and ors. Vs. Rustom Ali Chowkidar and ors.,

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Court : Kolkata

Decided On : Jan-14-1925

Reported in : 87Ind.Cas.903

Judge : Suhrawardy and ;Cuming, JJ.

Appellant : NabIn Chandra Chakrabarti and ors.

Respondent : Rustom Ali Chowkidar and ors., ;wajaddi Miji and ors. and Hara Kumar Acharya and ors.

Judgement :

Suhrawardy, J.

1. These appeals arise out of applications made by the appellants under Section 105 of the Tenancy Act for enhancement of rents of the tenants under Section 30 of the Tenancy Act.

2. These appeals relate to several khatians but it is not necessary to refer to each one of them as we are of opinion that the findings of the Courts below with reference to these khatians except khatian No. 50 are based upon facts and cannot be disturbed in second appeals.

3. With reference to khatian No. 50 the lower Appellate Court has held that the tenant is a-tenure-holder. He was also so described in the finally published Record of Rights. The learned Special Judge has come to this conclusion on a consideration of the fact that the present tenant does not belong to the agricultural class. The Assistant Settlement Officer did not come to any definite finding upon the status of this tenant. The plaintiffs rely upon a kabuliyat, dated the 10th Kartic 1298 B.S. in order to show that the defendant is not a tenure-holder, but an occupancy raiyat. The kabuliyat is headed as a raiyati kabuliyat. It recites that the jote was originally held by Alabardi Molla who may be presumed to be cultivators and there is a further stipulation that the tenant ' shall plant 1,000 betel nut trees per kani of bhiti land appertaining to this raiyati within five years and thereby re-claim the lands.' The kabuliyat read as a whole is a good evidence that the tenancy was a raiyati and not a tenure. The area of it was given as 3 kanis 1 gunda and 3 and odd karas. In our opinion this kabuliyat does not show that the tenant was a tenure-holder. On the contrary it supports the plaintiff's contention that he was an occupancy raiyat. The mere fact that the person who executed this kabuliyat did not belong to the cultivating class is not enough to prove that he was a tenure-holder, for it is common knowledge that the people who do not belong to this class sometimes take lands for the purpose of cultivation through the agency of hired labour.

4. We accordingly allow this appeal and set aside the decree of the lower Courts with regard to khatian No. 50 and direct that the rent of that khatian be increased at the rate of five annas in the rupees as has been done in the other cases. The result is, that the Appeals Nos. 591 and 592 are dismissed, and the Appeal No. 593 is partly allowed and is dismissed as regard khatian Nos. 35, 40 and 49. We assess the hearing-fee at one gold mohur in each case to be paid to the respondents who have appeared.

Cuming, J.

5. I agree.

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