

Abdul Hamid Vs. Abdul Miji and ors.

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SooperKanoon Citation : sooperkanoon.com/860708

Court : Kolkata

Decided On : Jan-27-1916

Reported in : 32Ind.Cas.710

Judge : N.R. Chatterjea and ;Richardson, JJ.

Appellant : Abdul Hamid

Respondent : Abdul Miji and ors.

Judgement :

1. This appeal arises out of a suit for rent and the only question involved in this appeal is, what is the rate of interest which the plaintiff is, entitled to get upon overdue instalments of rent from the defendants who are tenants under the plaintiff.

2. The original kabulyat by which the tenancy was created is of the year 1879 and it provided for interest at the rate of 6 1/4 per cent per mensem. There was, however, a solehnamah between the parties in the year 1907, and the lower Appellate Court, differing from the Court of first instance, has held that the solehnamah created a new contract of tenancy. If there was any contract after the passing of the Bengal Tenancy Act the defendants are not liable to pay interest at mote than the rate mentioned in Section 67 of the Bengal Tenancy Act, So the question is whether by the solehnamah the parties entered into a new contract of tenancy. We think, upon a consideration of the terms of the compromise, that

there was only a variation of some of the terms of the tenancy. The original rent was Rs. 42-9-0, which included certain abwabs amounting to Rs. 4-9-0; by the compromise, the parties agreed that Rs. 38 was to be the rent for the holding (after deducting Rs. 4-9, the abwabs) and a deduction was made in the rent in respect of a portion of the land which was in the possession of the landlord by virtue of purchase and another portion of which the landlord was in possession from before in osat raiyati right. There was thus a distribution of the rent in respect of the lands in possession of the landlord and of the tenants, respectively. The learned District Judge has held that the landlord could not put the tenants in possession of the land. No such case, however, was set up in the pleadings, nor is there any evidence on the record to justify the finding. The statements contained in the petition of compromise in respect of the lands in the possession of the plaintiff do not show that the landlord had dispossessed the tenants or could not put them in possession of any lands in raiyati right, but only relates to lands held in osat raiyati right. The compromise petition, so far as the question of interest is concerned expressly stated that in case of default of payment of any instalment, they, the tenants, shall pay interest at 6 1/4 per cent, per mensem in accordance with the kabulyat and in a subsequent part of the compromise petition it is stated that all other stipulations made in the kabulyat, dated the 21st Falgoon 1286, except those in respect of abwabs shall remain in force. We are of opinion upon a consideration of all the terms that there was only a variation of some of the terms of the old kabulyat and that with respect to the other terms including the rate of interest, there was no new contract.

3. That being so, the decree of the lower Appellate Court is modified in so far as the question of the rate of interest is concerned and the plaintiff will get interest at the rate of 6 1/4 per cent per mensem as decreed by the Court of first instance.

4. We make no order as to the costs of this appeal.