

Basiruddin Baiddy Vs. Hari Mohan Ghose

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Court : Kolkata

Decided On : Apr-19-1917

Reported in : 39Ind.Cas.720

Judge : Fletcher and ;Newbould, JJ.

Appellant : Basiruddin Baiddy

Respondent : Hari Mohan Ghose

Judgement :

Fletcher, J.

1. This is an appeal from a decision of the learned Subordinate Judge of the Twenty-four Pergannahs, dated the 7th September 1914, affirming the decision of the Munsif at Barasat. The suit was brought for rent. Both the lower Courts have decreed the suit for the amount claimed by the plaintiff. The first point argued before us was whether a certain kabuliyat, which the plaintiff had lodged into Court along with his plaint but which had not been proved or given in evidence, ought to have been referred to by the learned Judge of the Court of Appeal below in assessing the rent payable by the defendant. This kabuliyat, it was stated by the learned Vakil appearing on behalf of the defendant-appellant before us, had been admitted by his client in his written statement. I am not prepared to agree with the view of the learned Vakil that the statement in his client's written statement amounts to an admission of the kabuliyat. But the learned Judge of the lower

Appellate Court refused to go into this matter, on the ground that it ought to have been raised and the document ought to have been given in evidence in the primary Court. In the view I take, it makes little or no difference as to whether the document is admitted in evidence in this case or not, because, if the document is available for the defendant to argue as the basis on which the rent is payable, I am clearly of opinion that the view put forward by the defendant on the construction of the document is untenable. The rent payable by the document was a rent payable partly in cash and partly in kind. The cash rent was Rs. 45-8 0 and the rent payable in kind was 11 aras of paddy whose price was Rs. 22, the total rent being fixed at Rs. 67-8-0. The contract provided further that in every year the tenant should pay the rent fixed and the paddy in the months of Bhadra and Pous. Apparently, the word 'fixed' clearly governs only the word rent and not paddy and so apparently the price of the paddy was not fixed. But that makes little or no difference. The question is: 'Has the tenant under that document the right at any time to pay in lieu of the 11 aras of paddy the sum of Rs. 22.' This case is not distinguishable from the case of *Baneswar Mukherji v. Umesh Chandra Chakrabarti* 7 Ind. Cas. 875 ; 37 C. 626. There the rent was cash rent and 40 maunds of paddy, of which the value was stated to be Rs. 37, the total rent being Rs. 49 14 0, and the learned Chief Justice in that case held that, notwithstanding the statement as to the value of the paddy, the tenant was not entitled to pay the named sum in lieu of the paddy and, on his failure to deliver the paddy, in the view of the contract, the tenant was liable to pay compensation to the landlord for the value of the paddy, as at the date of the institution of the suit. There is another class of cases in which an option is given to the tenant with regard to the rent payable in kind and that is where the tenant undertakes to deliver so much paddy or to pay a particular sum of money. It is quite clear that, in a case of that nature, under the terms of the contract itself, the tenant has the right to perform the contract either by delivering the paddy or paying the sum of money. But in a case of this nature where 11 aras of paddy is simply stated whose price is Rs. 22 and where the covenant following is to deliver the paddy itself, the tenant, in my opinion, has no right to perform the contract otherwise than by delivering the 11 aras of paddy and, on failure to do so, he must pay damages to the landlord at the rate of the value of the paddy as at the date when the breach occurred. In my

opinion, even assuming that this pattah was entitled to be referred to in the lower Appellate Court by the defendant-appellant, the result would have been the same and the paddy rent having been assessed with reference to the market value thereof at the time when the defendant ought to have delivered the same to the plaintiff, the suit has been rightly decreed. In my opinion, the result arrived at by the lower Appellate Court is correct. The present appeal, therefore, fails and must be dismissed with costs.

Newbould, J.

2. I agree.

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