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SooperKanoon Citation : sooperkanoon.com/884202

Court : Kolkata

Decided On : Apr-22-1914

Reported in : AIR1914Cal769,24Ind.Cas.677

Judge : D. Chatterjee and ;Chapman, JJ.

Appellant : Akram Ali

Respondent : Anwar Ali and ors.

Judgement :

1. This appeal arises out of a suit for rent brought by the plaintiffs on the basis of a kabuliat executed by the defendant. The kabuliat is in respect of two kanis and four gundas of land, out of lands comprised in three holdings of which, the particulars are given in the kbuliat By this kabuliat the defendant agrees to deliver to the plaintiffs at their house a certain quantity of paddy per annum for the use of this land, and in case he does not do, so the landlord would be entitled to recover the money-value of the paddy which was settled by the terms of the kabuliat. The defendant haying failed to deliver the paddy this suit was brought for recovery of the money-value of the produce rent agreed upon in the kabuliat.

2. One of the pleas taken by the defendant was that according to Section 48 of the Bengal Tenancy Act, he was not liable to pay-more than 25 percent in excess of the rent payable by the plaintiffs, who are raiyats, to their landlords. The first Court gave effect to this plea and passed a modified decree in favour of the plaintiffs.

Upon appeal by the plaintiffs the Subordinate Judge has decreed the suit of the plaintiffs holding that the case is not governed by Section 48 of the Bengal Tenancy Act, and, secondly, that on the materials in the record it is impossible to distribute the rent payable by the plaintiffs on the lands in suit. This judgment of the Subordinate Judge is attacked by the learned Vakil for the defendant on two grounds. The first is that Section 48 is properly applicable to this case as under the kabuliat the landlords could recover by a suit the money-value of the produce rent in case the produce rent was not delivered.. There may be some substance in this argument of the appellant, for Section 48 only provides that the landlord of an under-raiyat shall not be entitled to recover rent exceeding the rent etc, etc, that is to say, to recover by a suit, under the terms of the kabuliat if the tenant does not deliver the produce rent, the only rent that could be recovered by a suit by the landlord is the money rent. But this argument is not sufficient for upsetting the decree of the lower Appellate Court, because on the materials in the record it is impossible to distribute the rent payable by the plaintiffs on the land in suit. It is contended by the learned Vakil for the appellant that the onus of proving the rent payable by the plaintiffs for the land in suit was upon the plaintiffs. We think that that is not so. The law provides that the landlord shall not recover against his tenant more than a certain percentage in excess of the rent payable by him. If the tenant pleads that the rent claimed is more than that proportion, it is for the tenant to make out that it is so. Besides this it has been held in the case of *Nim Chand Saha v. Joy Chandra Nath* 15 Ind. Cas. 256 : 39 C. 839 : 16 C.W.N. 857. that Section 48 of the Bengal Tenancy Act applies only to cases in which the land held by the raiyat is co-extensive with the land held by the under-raiyat. In this case admittedly the land held by the under-raiyat is a very small fraction of the holdings of his raiyat landlords. In this view of the case the appeal is dismissed with costs.