

CALCUTTA HIGH COURT

Nilkantha Pati

Vs

Kshitish Chandra Satpati

(R.P Mookerjee and Lahiri, JJ.)

07.09.1950

JUDGMENT

R.P. Mookerjee, J.

1. This is an appeal by the defendant and arises out of a suit brought by the plaintiffs claiming rent for the demised premises.

2. The plaintiffs claimed to be entitled to recover arrears of rent with cess and damages for the years 1349 to 1352 B. S. The only question for determination in this appeal is whether the defendant is entitled to a total suspension of the rent or a proportionate abatement of the same for the period in suit, on the ground that the plaintiffs landlords had dispossessed the tenant from one of the plots in suit, in spite of protests from the tenant defendant.

3. The learned 'Munsif found that out of a total area of 7.48 acres constituting the jama in suit the landlords had dispossessed the defendant in respect of C. S. Plot No. 816 covering an area of .04 acre. He observed :

"It seems to me that the plaintiffs finding the position of the C. S. Plot No. 816 vis a vis their own plot No. 802 actuated by greed simply illegally and highhandedly grabbed the C. S. Plot No. 816 within their own C. S. Plot No. 802 in 1349 B. S. in the hope that the defendant who is a Pathsala Pandit would tolerate it and would at least get a proportionate abatement of rent."

4. The rent for the demised land as fixed by the kabuliyat Ex. 1 was a lump rent for the entire land and it was held that the plaintiffs were not entitled to any rent from the defendant until C. S. Plot No. 816 was restored. The suit was accordingly dismissed. The plaintiffs' story that they had been possessing C. S. Plot No. 816 on the strength of a usufructuary mortgage was found not to have been substantiated.

5. On appeal by the plaintiffs the District Judge agreed with the trial Court that the plaintiffs' story of a usufructuary mortgage to justify their possession of C. S. Plot No. 816 was not proved. He also found that the plaintiffs had lands on three sides of C. S. Plot No. 816 which was a kink in their side. They wanted to remove the dent and straighten out the boundary line. The plaintiffs were held to have dispossessed the defendant of this small plot in 1349 B. S. The area of the plot dispossessed being very small, it was held that it would not be equitable to suspend the entire rent. As the defendant had continued to be in possession of the rest of the holding the learned District Judge came to the conclusion that only a small part of the rent need be suspended. He deducted Re. 1 from the rent claimed for each year. He also disallowed compensation and costs. As the other issues had been left undecided by the trial Court, he directed a remand to that Court for a decision of those other issues.

6. The only point urged by the tenant appellant in this appeal is that he is, on the facts of this case, entitled to a total suspension of rent for the period in suit.

7. The question whether a tenant is entitled to abatement or suspension of rent, on the ground that the landlord had not either at the inception of the tenancy put the tenant in possession of the entire demised property or that he had been responsible for the subsequent eviction of the tenant from a part of the tenancy, had given rise to conflicting decisions in this Court.

8. Sir Barnes Peacock C. J. had in *Gopanund v. Gobind Pershad*¹, relying on the opinion expressed in Bacon's Abridgment, introduced in India the English rule of suspension of rent. The rule as enunciated in Bacon and adopted in this Court was in the following terms :

"Where a lessor enters forcibly into part of the land there are variety of opinions whether the entire rent shall not be suspended during the continuance of such tortuous entry, and it seems to be the better opinion and the settled law at this day, that the tenant discharged from the payment of the whole rent till he be restored to the whole possession, that no man may be encouraged to injure or disturb his tenant in his possession, whom by the policy of the law he ought to protect and defend."

9. This view was adopted in later cases as in *Kadumbinee Dossia v. Kasheenath Biswas*², *Manindra Chandra v. Narendra Chandra*³, Even when the landlord had interfered with the collection of rent by his tenant from the subordinate tenants it was deemed to be an eviction and the same principle was applied to the case of *Kristo Soondur v. Koomar Chunder*⁴,

10. It was generally held in subsequent cases that the eviction of a tenant whether from a part of the demised premises or from the whole, entails a suspension of the entire rent so long as the eviction lasts, whether the tenant remains in possession of the residue or not. The Courts went so far as to hold that it was not necessary for the application of this rule to find out from how much land the tenant has been dispossessed: If it is found that he has been dispossessed from some

land, the test to be applied is whether there has been an actual physical expulsion and if such an act is of a permanent character with the intention of depriving the tenant of the enjoyment of the demised premises or from part thereof. *Dwijendra Nath v. Aftabuddin Sardar*⁵).

11. It was also generally held that when the rent settled by the landlord was at a certain rate per bigha the tenant would not ordinarily be allowed a total suspension of rent, even when the landlord had interfered with the possession or had trespassed upon the land in the occupation of the tenant. But there had been instances where the Court went so far as to hold that even where rent is reserved at a certain rate per bigha and the landlord is found to have interfered with the possession of the tenant the former is not entitled to recover rent from the tenant even for the lands left in possession of the tenant. Maclean C. J., and Banerjee J. held in *Harrokumari v. Purna Chandra*, 28 Cal. 188, that even in a case, where the rent was settled per bigha, it could not be said that each bigha of land was separately assessed and separately charged with rent and accordingly that the landlord would not be entitled to realise rent even for the lands left in the possession of the tenant.

12. The Judicial Committee in *Katyayani Debi v. Uday Kumar Das* settled the rule of law to a certain extent and formulated the principles in the following terms :

"The doctrine of suspension of payment of rent, where the tenant has not been put in possession of a part of the subject leased, has been applied where the rent was a lump rent for the whole land leased, treated as an indivisible subject. It has no application to a case where the stipulated rent is so much per bigha or acre."

13. This decision definitely overruled the view expressed in the earlier cases that if the rent stipulated is so much per bigha and the tenant has not been put in possession of a portion at the inception of the tenancy of the land leased, the doctrine of suspension of payment of rent would be attracted. This expression of opinion was further taken to be in affirmance of the view expressed in earlier cases, *Dwijendra Nath v. Aftabuddin Sardar*, 21 C. W. N. 492: (A.I.R. (4) 1917 Cal. 177)(*Supra*) that if the rent settled be a lump one and the landlord is responsible for the eviction of the tenant during the subsistence of the tenancy from a portion of the land demised, the tenant is entitled to a total suspension of rent. Everywhere the portion dispossessed is found to be very small in comparison with the total area still in possession of the tenant, relief was granted in favour of the tenant by suspending rent in its entirety; *Suresh Chandra v. Mathura Nath*, *Dhirendra Nath v. Bhabatarini Debi*, *Mahim Chandra v. Karam Ali* affirmed on Letters Patent Appeal by C. C. Ghose and Mallick JJ. on 8-1-1929, *Abhoya Charan v. Hem Chandra and Mahomed Ali v. Karam Ali*.

14. There had, however, been observations in certain cases from before the decision in *Katyayani's* case questioning the reasonableness and propriety of applying the technicalities to be found in the English law so far as the relationship of landlords and tenants in this country was

concerned. (Ananda Prosad v. Mathura Nath, 13 C. W. N. 702 : 2 I. o. 123).

15. It is not necessary to refer in detail to all the various decisions after Katyayani's case . It may be stated that the general trend of opinion in this Court was to the effect that if the rent payable by the tenant be a lump one and the landlord is responsible for evicting the tenant from a portion of the tenancy, the tenant is entitled to a total suspension of rent so long as the landlord continues to be in wrongful possession of the land trespassed upon. There had been, however, dissentient opinion, in some of the cases as had previously been expressed in Dhunput Singh v. Mahomed Kazim, 24 Cal. 296. It had been held that even if the rent be a lump one and the interference committed by the landlord is in respect of a portion of the property, though the ordinary rule is that there should be suspension and no apportionment of rent, but if the interference be in respect of only a certain small portion of the demised property, the plaintiff is entitled to recover the rent for the portion of the tenancy still in possession of the tenant.

16. In this state of the law the Judicial Committee delivered its opinion in Ramlal Dutt v. Dhirendra Nath . In this case the facts were that possession of 83 bighas out of a total of 1464 had not been given to the lessee when the tenancy was created. It was further found that the successive lessees had not insisted on getting back possession of that area and for more than 50 years the entire rent had been paid by the tenants, C. C. Ghose and Bartley JJ. who had delivered the judgment in the High Court, had, on a consideration of the above facts, concluded that the doctrine of suspension of rent as found in English cases could not be applied rigidly in this country. It should be regarded as a rule of justice, equity and good conscience. As the area of which possession had not been delivered was comparatively speaking very small and the full rent had been paid from a very long time without any objection, the tenant should not be allowed to hold a very large area still in his possession free of rent in perpetuity, as there was no reasonable chance of the landlord being able, at this distance of time, to deliver possession of that small area.

17. Although the case before the Board was not a case of eviction by the lessor, Sir George Rankin, delivering the judgment, proceeded to discuss the propriety of applying the English principles of suspension of rent to altogether different conditions prevailing in Bengal. It was pointed out that the tenancies in Bengal were of different kinds but in very many cases were permanent and at fixed rates:

"The effect of the rains on rivers and the boundaries of estates, the absence of boundary marks and pillars, the difficulty of relaying maps on the site, the scarcity of reliable old maps and the recent origin of survey and settlement operations--these two are matters which give a special edge of unreason to any general doctrine that suspension of the entire rent is the consequence of a failure to give possession of any part, however small."

18. In these circumstances, the Judicial Committee thought it impossible to require the Courts in

Bengal as matter of justice, equity, and good conscience to follow English authorities, such as *Neale v. Mackenzie*, (1836) 1 M and W 747 : (6 L. J. Ex. 263). The Board approved of the view expressed in some of the more recent decisions of this Court refusing to apply the doctrine that suspension of rent should follow as a matter of rule when there was a failure to deliver possession of any part of the land demised.

19. The Judicial Committee also pointed out:

"The observations of the Board in *Katyayani's* case have only added to the perplexity, since they have in some cases been wrongly taken to lay down that if the rent is a lump sum rent, then in all cases of failure to give possession of any part there must be a suspension of the entire rent. They were intended only as showing that on its facts that case raised no question of suspension even if the course of discussions in Bengal be taken as correct, a question of which there was no need to embark."

20. The Judicial Committee came definitely to the conclusion that even if the rent was a lump sum one that would not justify in all cases to allow total suspension of rent when the lessor had failed to put the lessee in possession of a small portion of the land settled. The Judicial Committee, however, was careful enough to indicate :

"As the case before the Board has been held to be a case not of eviction by the lessors, but of their failure to give possession, their Lordships in this *ex parte* appeal confine themselves to the law applicable to the latter class of cases. To that class they think that the doctrine of suspension of rent should not be applied in Bengal. Whether it should be applied at all to cases of eviction of the lessee by the lessor from a part of the land, and if so, whether it is limited to rents reserved as a lump sum, and whether it is rigid or discretionary rule, these questions will call for careful review when they were presented by the facts of a particular case."

21. This latest decision of the Judicial Committee has modified the proposition previously laid down in a long series of decisions that there was practically no distinction between a case where the lessor has evicted the lessee from a part of the property leased and cases where the lessor had failed to give possession of a part of the property leased at the inception of the tenancy. Further, even if the rent fixed be a lump sum one, in the case of a lessor failing to give possession at the inception of the tenancy, that lessor is not to be denied the entire amount of rent payable. The Court has to examine the facts and circumstances for determining whether or not it would be more equitable not to direct total suspension of rent but consider the other forms of relief, damages, apportionment, specific performance, the right to avoid the lease, as the case may require.

22. After the decision above mentioned this Court was called upon to consider the point not

directly covered by the Judicial Committee, and that was where a tenant had been evicted by landlord from a part of the tenant. In *Ashutosh Roy v. Indu Bhusan Sen Gupta*⁶, it was observed that "the facts of each case should be examined to decide whether in the circumstances of the case it would be in accordance with justice, equity and good conscience to allow suspension of rent. If the dispossession does not amount to any tortuous or wrongful act on the part of the landlord and where the area from which the tenant had been dispossessed is very insignificant compared with the total area demised and particularly if the claim for the suspension of rent is not put forward shortly after such eviction it would be in accordance with rules of justice, equity and good conscience, not to allow total suspension of rent.

23. *Tirthabala v. Uday Chand Mahatab* was not a case of eviction of the tenant by the landlord, but in that case an attempt had been made by the landlord to disturb the possession of the tenant. The landlord in this case had issued a notice calling upon the subordinate tenants not to pay rents. The landlord did not interfere actively with the collection of rent by the patnidar after it became known to the landlord that he was not entitled to do so. The earlier notice to the subordinate tenants, however, had not been withdrawn. On these facts, the Court expressed the view that total suspension of rent was not called for.

24. In *Abdul Sakur v. Pratap Udai Nath Shahi Deo*⁷ a Division Bench of the Patna High Court also observed that even where the original rent was at a certain rate per acre and there had been dispossession by the landlord from a small part of the holding, which dispossession was the result of inadvertance and not by force or deliberation, and there had been no impairment of the value of the holding by the dispossession from a minute portion of it, the tenant was not entitled to a suspension of the entire rent of the holding but only to a proportionate reduction of rent.

25. In the present case, both the Courts below have concurrently come to the conclusion that the landlord "was actuated by greed" and "had simply illegally and highhandedly grabbed a portion of the leasehold property." The landlord had hoped that the defendant, who was a poor Pathsala Pundit, could not only tolerate but would get only a small proportionate abatement of rent. Although both the Courts held the same view as to the motive and illegal highhandedness of the landlord, the trial Court considered the same to be sufficient to justify total suspension of rent but the lower appellate Court thought that as the area from which the tenant had been dispossessed was a very small portion it would not be equitable to suspend the rent.

26. The question for decision before us, therefore, is whether in the circumstances of this case a total suspension of rent or a proportionate apportionment thereof, will be justified on the ground of justice, equity and good conscience.

27. The observations of the Judicial Committee in *Ramlal Dutt v. Dharendra Nath* emphasising the points of difference between the conditions in England and in Bengal, are not at all attracted in a case of this description. The rule of equity as laid down by Sir Barnes Peacock in *Gopanund*

*v. Gobind Prosad*⁸, although relying upon observations in English cases, enunciates a rule of equity irrespective of the country or the conditions prevailing therein. That rule is not to be attracted as a matter of course in all cases. The Court has to consider whether the act of the landlord in dispossessing the tenant was a tortuous or mala fide one or an inadvertent one. Are the facts such as to attract equitable rules for granting relief ?

28. A contract which is entered into between the landlord and the tenant should be held to be a sacred one and the Court is required to protect the weak and the poor from the highhanded, improper and illegal acts on the part of the rich and influential. It is concurrently found in this case that the landlord had dispossessed the tenant from a portion of the tenancy only because he wanted to straighten out his boundary and the tenant was poor and had not the influence of the former. The mere fact that the area dispossessed is a small one is not of an over-riding importance so as to dissuade the Court from applying the principles of justice, equity and good conscience if the Court finds that the act of the landlord was definitely a tortuous one.

29. Irrespective of the principles enunciated by the English Courts, we have no doubt, on the facts of the present case, that the landlord having dispossessed the tenant in a highhanded manner, is not entitled to claim any rent on the basis of the contract with the tenant, as the former had acted tortuously in not allowing the tenant to hold the lands peacefully. The decision referred to above (*Ashutosh Roy v. Indu Bhusan Sen Gupta*⁹), also clearly indicates that where the landlord acts tortuous it is for the Court to consider whether the rule of equity for a total suspension of rent should or should not be applied. If and when the landlord chooses to put the tenant again in possession of the portion from which the latter had been dispossessed, he will be entitled to the rent and not till then.

30. The result, therefore, is that this appeal is allowed. The judgment and decree passed by the Court of appeal below are set aside and those of the trial Court restored. The plaintiffs' suit is dismissed with costs in all the Courts.

Lahiri, J.

31. I agree.

Cases Referred.

112 W.R. 109

213 W. R. 338

346 Cal. 956 : (A.I.R. (6) 1919 Cal. 379)

415 W. R. 230

521 C. W. N. 492 : A.I.R. (4) 1917 Cal. 177

649 C. W. N. 470

7A. I. R. (35) 1948 Pat. 157

812 W. R. 109

