APPELLATE CIVIL.

Before Teunon and Chapman JJ.

1913

Dec. 22.

HARIHAR PERSAD BAJPAI

v.

AJUB MISIR.

Landlord and Tenant—Presumption of permanency of rent—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Acts of 1898 and I of 1903, ss. 31A, 50(2), 113 and 115—Effect of ss. 31 and 113 of the Bengal Tenancy Act—Prevailing rate—Ground for enhancement of rent.

Where a Record of Rights has been finally published, in view of s. 115 of the Bengal Tenancy Act the presumption under s. 50 (2) of the Act does not arise where the tenants have been recorded as occupancy raiyats and not raiyats holding at fixed rents.

Radha Kishore Manikya v. *Umed Ali* (1) not followed.

Pirthichand Lal Chowdhry v. *Basarat Ali* (2) relied upon.

By enacting s. 31 of the Bengal Tenancy Act the Legislature never intended to alter the pre-existing law in districts to which that section has no application. Where each tenant holds at a different rate there is no prevailing rate.

Even on the ground of prevailing rate, there can be no enhancement of rent for 15 years, under s. 113 of the Bengal Tenancy Act, where rent has been settled under Chapter X of the Act.

THE facts will appear from the judgment of the Court.

Dr. Dwarka Nath Mitter and *Babu Bijoy Kumar Bhattacharyya*, for the plaintiff-appellant.

Babu Akshoy Kumar Banerjee, for the respondent.

* Appeals from Appellate Decrees, Nos. 1917, 2131 to 2134 of 1911, against the decrees of the District Judge of Mozafferpore, dated March 31, 1911, modifying the decrees of the Munsif of Motihari, dated June 20, 1910.

(1) (1908) 12 C. W. N. 904.

(2) (1909) I. L. R. 37 Calc. 30; 13 C. W. N. 1149.

TEUNON AND CHAPMAN JJ. These six appeals arise out of four suits for enhancement of rent. The claim to enhancement was based on two grounds, namely, (*i*) that the rate of rent paid was below the prevailing rate; and (*ii*) that there had been a rise in the prices of staple food crops.

In three of the suits the learned District Judge found that in proceedings under Chapter X of the Bengal Tenancy Act, the rent of the holdings had been settled by the Settlement Officer. In these proceedings the Record of Rights was finally published on the 18th of January 1898, and the suits were instituted on the 6th of July 1909. The District Judge, therefore, held that in view of the 15 years' period prescribed in section 113 of the Act the suits must be regarded as premature. In appeal, it is contended that the rents were merely recorded and not settled, and that even if the rents were settled, an enhancement might still be granted on the ground of prevailing rate.

The District Judge's finding that the rents had been settled under Chapter X of the Act was based on the entries in certain *khatians* forming part of the Record of Rights. These *khatians* have been removed from the record by the landlord-appellant and have not been produced before us at the hearing of these appeals. We must, therefore, hold that the District Judge's finding is correct.

The second contention is contrary to the clear provisions of section 113 and cannot be supported. This disposes of the five appeals brought by the landlord and these appeals are, therefore, dismissed with costs.

The remaining Appeal No. 2007 is by the tenants Ajub Misir and others. They contend (*i*) that they should have been found to be raiyats holding at a fixed rent; and (*ii*) that an enhancement on the ground

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of prevailing rate, though disallowed in the judgment, has been granted by the decree.

In the Record of Rights, to which reference has already been made, the tenants have admittedly been recorded as occupancy raiyats and not as raiyats holding at fixed rents. The contention before us is that notwithstanding this entry in the Record of Rights (finally published in January 1898), the appellants are entitled in the present suit (instituted in 1909) to the benefit of the presumption arising under section 50 (*2*) of the Act. This contention is based on the case of *Radha Kishore Manikya* v. *Umed Ali* (1), but in view of the plain language of section 115 of the Act, and the decision of the Full Bench in the case of *Pirthichand Lal Chowdhry* v. *Basarat Ali* (2), can no longer be supported.

On the question of prevailing rate the decree is not in accordance with the judgment, but the landlord-respondent contends that the District Judge has erred in holding that in the village in suit there is no prevailing rate. It is conceded that section 31A has not been extended to the local area in question, but the respondent seeks to employ the method therein prescribed, either without modification or with this modification, that he would take as criterion not area but the number of tenants, that is to say, he contends that the rate at or above which more than half the tenants hold should be taken to be the prevailing rate. On this principle he says that in the case of *paddy* lands (spoken of by the Commissioner as A lands) the prevailing rate is Rs. 3-8 or Rs. 3-12, and in the case of the comparatively low or *bethan* lands is Rs. 3-6 or Rs. 4-12. But this contention is opposed to all authority, and we cannot hold that by enacting section 31A, the Legisla-

(1) (1908) 12 C. W. N. 904.

(2) (1909) I. L. R. 37 Calc. 30; 13 C. W. N. 1149.

ture intended to alter in this way the pre-existing law in Districts to which that section has no application. Moreover, if we were to accept the respondent's contention, it does not appear that the materials for ascertaining the prevailing rate are complete or sufficient. The Commissioner's report shows that he has left out of consideration a number of holdings measuring in the aggregate 220 bighas, on the ground that though comprising lands of both classes, they are held at lump rentals. We are unable, however, to accept the landlord's contention, and agree with the District Judge in holding that in this village, where 44 tenants hold A class lands at 44 rates, varying from annas 15 to Rs. 8-9, and 13 tenants hold B class lands at 13 rates rising from Re. 1-11 to Rs. 6-14 a bigha, there is no prevailing rate.

It is next contended that the District Judge should have agreed with the Munsif in holding that the rise in prices represented 2 annas in the rupee. It appears that in this area there are 2 staple food crops, rice and maize, that rice has risen to the extent of 1 anna 7 pie per rupee, and maize to the extent of 4 pie per rupee. The Munsif took the aggregate, and decreed an enhancement to the extent of 3 annas per rupee while the District Judge has taken the mean or average. As we are informed (and this is not disputed by the landlord-respondent) that both crops grow on all the lands of the holding, we are of opinion that the District Judge is right in taking the mean, and in decreeing an enhancement to the extent of only one anna per rupee. In the result, this appeal is decreed to the extent indicated in the above judgment, that is to say, the enhanced rent decreed is reduced from Rs. 10-9-6 to Rs. 3-15, but as the appellant could have obtained this relief by an application for amendment of the decree, we make no order as to costs.

S. K. B.