APPELLATE CIVIL.

Before Rankin C. J. and Mitter J.

GOCOOL CHUNDER LAW

v.

JAMAL BISWAS*.

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Aug. 4.

Rent—Settlement of fair rent—Basis of landlord's claim—Value of record under Estates Partition Act—Bengal Tenancy Act (VIII of 1885), s. 52.

In a case instituted by the landlord under section 105 of the Bengal Tenancy Act for settlement of fair rent, where there is nothing to show when the tenancy was created, how the rent was assessed, whether the rent was consolidated rent or was assessed at a certain rate per *bigha* and whether there was any measurement of the holding at the inception of the tenancy, it is necessary for the landlord to base his claim upon some measurement on the basis of which the rent was assessed or adjusted.

The measurement made for the purpose of the Estates Partition Act and the statement of area as regards a tenancy need not necessarily be of great value against the tenant and cannot by itself be a substantial basis of the landlord's claim for increase of rent under section 52 of the Bengal Tenancy Act.

Manindra Chandra Nandi v. *Kaulat Shaik* (1), *Durga Priya Choudhuri* v. *Nazra Gain* (2), *Bishun Pragash Narayan Singh* v. *Achai Dusadh* (3) and *Janki Dobey* v. *Kirtarath Roy* (4), referred to.

APPEAL FROM APPELLATE DECREE on behalf of the two sons of the original plaintiff, Raja Kristo Dass Law, since deceased.

This was an appeal by the heirs and legal representatives of the original plaintiff in a case under section 105 of the Bengal Tenancy Act. The claim was amongst others for additional rent for additional area under section 52 of the Bengal Tenancy Act. The

*Appeal from Appellate Decree, No. 1686 of 1925, against the decree of M. C. Ghose, Special Judge of Jessore, dated May 4, 1925, affirming the decree of A. B. Roy, Assistant Settlement Officer of Jessore, dated July 26 1924.

(1) (1923) I. L. R. 50 Calc. 957.
(2) (1920) 25 C. W. N. 204.
(3) (1922) I. L. R. 1 Pat. 459.
(4) (1908) 13 C. W. N. 93, 94.

plaintiff relied on the area shown in the record under the Estates Partition Act as compared to the area in the later record-of-rights under the Bengal Tenancy Act.

The Assistant Settlement Officer regarded the measurement under the Estates Partition Act to be unreliable and held that the plaintiff had not made out a case for increase of rent, he having given no evidence of the area or standard of measurement at the inception of the tenancy. He, therefore, disallowed the claim for excess rent.

The appeal by the sons of the plaintiff before the Special Judge was also unsuccessful, though his reasons were somewhat different from that of the Assistant Settlement Officer.

Hence this appeal in the High Court.

Mr. Narendra Chandra Bose (with him *Babu Nalini Chandra Pal*), for the appellants. The Courts below have proceeded on a wrong basis. It is sufficient for the landlord to establish that since the inception of the tenancy rent has been assessed on the basis of a certain area and that the tenant is in possession of lands not included in that area and on which no rent was assessed. The language of section 52, cl. (1) (*a*) is "the area for which rent has been previously "paid by him". This expression must mean the area with reference to which the rent *previously* paid had been assessed or adjusted. *Rajendra Lal Goswami* v. *Chunder Bhusan Goswami* (1), *Akbar Ali Mian* v. *Hira Bibi* (2), *Durga Priya Choudhuri* v. *Nazra Gain* (3), *Manindra Chandra Nandi* v. *Kaulat Shaik* (4) and *Bishun Pragash Narayan Singh* v. *Achaib Dusadh* (5).

(1) (1901) 6 C. W. N. 318.
(2) (1912) 16 C. L. J. 182.
(3) (1920) 25 C. W. N. 204.
(4) (1923) I. L. R. 50 Calc. 957.
(5) (1922) I. L. R. 1 Pat. 459.

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In this case, the area having been scientifically measured during the previous proceeding under the Estates Partition Act and in the presence of the defendants-tenants, the Courts below ought to have held that that was the area with reference to which the rent previously paid by the tenant was assessed or adjusted. The elaborate procedure laid down in the Estates Partition Act, which the Deputy Collector has to follow in making partition, raises the entries prepared by him to the same level as that of the record-of-rights: *Janki Dobey* v. *Kirtarath Roy* (1).

Babu Bhudar Haldar, for the respondents. The landlord cannot succeed unless he shows that the lands in respect of which an additional rent is claimed are lands held in excess of those for which rent was originally paid, that is to say, the landlord must prove an excess over the quantity of land included in the tenancy at its inception. The true criterion is the area of the holding at the inception of the tenancy and not any intermediate measurement. See *Gouri Patra* v. *Reily* (2), *Rajendra Lal Goswami* v. *Chunder Bhusan Goswami* (3) and *Rajkumar Pratap Sahay* v. *Ram Lal Singh* (4). The proceedings under the Estates Partition Act cannot be held to be proceedings in which the rent previously paid was adjusted or assessed.

Mr. Narendra Chandra Bose, in reply.

RANKIN C. J. This is an appeal from a decision of the Special Judge of Jessore, affirming a refusal on the part of the Assistant Settlement Officer of Jessore to give to the appellant additional rent for additional area under section 52 of the Bengal Tenancy Act.

(1) (1908) 13 C. W. N. 93, 94.
(2) (1892) I. L. 20 Calc. 579.
(3) (1901) 6 C. W. N. 318.
(4) (1907) 5 C. L. J. 538.

Plaintiff's case is that there was a partition under the Estates Partition Act in the year 1909, that the Deputy Collector in accordance with powers given to him under Chapter VI of that Act measured the lands comprised in the tenancy and that it was found upon that measurement that the area in the occupation of the tenant was some 78 *bighas*. It is said that in the record-of-rights it is found that the area now in the occupation of the tenant has increased. Accordingly it is said that there have been two scientific measurements and that the previous measurement for the purposes of the Estates Partition Act should be taken as showing what the area was for which the tenant was then paying rent, and that he is now proved to be in possession of additional area and must pay additional rent therefor.

The Assistant Settlement Officer has taken the view that the measurement for purposes of the Estates Partition Act is not reliable, that while it is quite true that the tenant gets information of the proceeding, he is not seriously interested in checking the area or disputing the figure of the area at which it is proposed to record the tenancy for the purpose of partition of the superior interest. That being so, he has refused to accept the area found in the partition proceeding as being a reliable measurement of the right of the tenant at that time. He has also taken the view (which for the purposes of this case I shall assume to be inaccurate) that the standard of measurement adopted in 1909 is not shown. As a matter of fact, the area is stated in terms of acres and therefore it has been represented to us that the standard measurement was the measurement employed.

When the matter came before the learned Special Judge, the question was decided in this way: "It "is clear, however, that the tenancy existed at the

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"same rate from long before the partition of 1316 "B. S. The onus is upon the plaintiff to show that "the present area is greater than the area at the "inception of the tenancy". On the view, therefore, that the proceedings in 1909 were not proceedings which throw any light upon the inception of the tenancy and the original terms of the tenancy, the learned Special Judge has affirmed the decision of the Assistant Settlement Officer.

On appeal to this Court, the learned advocate for the plaintiff points out that the doctrine that in all cases the plaintiff has to show what the area was at the inception of the tenancy cannot be supported. The true principle is one which permits of additional rent being granted not on the basis of what happened at the inception of the tenancy, but on the basis of what happened at any subsequent occasion when the rent was last assessed or adjusted. That doctrine is to be found laid down in several cases, though in cases where there is no question of an intermediate assessment or adjustment, the language of the decisions is sometimes apt to mislead. In particular, there is a decision of my own in *Manindra Chandra Nandi* v. *Kaulat Shaik* (1), where no question of intermediate assessment or adjustment was raised and it may be that the language used with reference to those particular facts is open to the comment that it does not take account of the circumstance that the occasion, which is important, is not necessarily the first assessment or adjustment of rent, but the last assessment or adjustment of rent,—that adjustment under which the tenancy was being held at the time of the alleged discovery of excess area. If authority be wanted for the proposition that it is sufficient for the landlord to establish that since the

(1) (1923) I. L. R. 50 Calc. 957.

inception of the tenancy rent has been assessed on the basis of a certain area and that the tenant is in possession of land not included in that area and on which no rent was assesssd, it may be sufficient to refer to the case of *Durga Priya Choudhuri* v. *Nazra Gain* (1). In these circumstances, it is contended on the part of the appellant that the present case is really governed in principle by a decision of the Patna High Court in the case of *Bishun Pragash Narayan Singh* v. *Achaib Dusadh* (2). In that case there had been a previous measurement at the time of a settlement made in 1898 under Chapter X of the Bengal Tenancy Act. The tenant was recorded in the record-of-rights as holding such and such an area for certain rent and when the case came first before that High Court, Mr. Justice Ross refused the landlord's claim to additional rent on the ground that it was not shown what were the conditions of the tenancy at the inception thereof. The Court, on Letters Patent Appeal, dissented from that view and the principle which they proceeded on was this that the record-of-rights defines the relationship between the landlord and tenant in various respects, including the area of the holdings for which rent is paid and is presumed to be correct until the contrary is proved. In other words, they treat the settlement proceedings as being an assessment or adjustment of rent, a restatement *primâ facie* binding on both parties, not merely of the area in fact in the occupation of the tenant and of the rent he is in fact paying, but a correct statement of the tenant's right—a statement, namely, that that is the area which he is entitled to hold. The principle of the decision may be exhibited from a passage in the judgment of Mr. Justice Adami: "The rent payable by the tenants was ascertained

(1) (1920) 25 C. W. N. 204. (2) (1922) I. L. R. 1 Pat. 459.

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"and recorded, and it must be presumed that the "tenants accepted that rent as the rent payable for "the area as recorded. They did not come forward "and prove that the area recorded was less than the "area of the holding at its inception. The entry "shows that the rent entered there was either the rent "for the area which the tenants had been paying previ- "ous to 1898, or was the rent assessed or adjusted after "dispute during the settlement proceedings between "the parties as to the amount payable. In my opinion, "the area shown in the record-of-rights was the area "with reference to which the rent previously paid by "the respondents was assessed or adjusted". If that view be right, it is reasonably clear that there is nothing in this decision which in any way detracts from the authority of the principle that the words "the area for which rent has been previously paid by "him" in clause (*l*) (*a*) of section 52 mean the area with reference to which rent was assessed or adjusted.

In the present case we are asked to hold that the landlord's claim to additional rent can be made out on the basis of a measurement made for purposes of the Estates Partition Act, and it appears to me that such a measurement is in a different position for this purpose from the measurement recorded under Chapter X of the Bengal Tenancy Act. Under Chapter VI of the Estates Partition Act, it is quite true that a Deputy Collector has all the powers of a Revenue Officer under Chapter X. What he is to do, however, is merely to assess or describe the assets of the estate under partition for the purpose of partition. It is not impossible that the tenant's interest may be affected, as, for example, if the superior right over his own tenancy should be divided under Chapter VIII, but what the Deputy Collector has to do is really to make a list and valuation of the assets of the estate under partition.

He has to record the situation, the area and the boundaries of the tenancy, the rent as stated by the landlord, as stated by the tenant and as taken by himself for the purpose of partition. It is true enough that he has to publish a notification, that he has to be present in the village, that he has to read out the particulars and attest, as it is called, the survey papers and record of the existing rents and other assets. If the correctness of an entry is disputed, he may pass a summary order. If the correctness of any measurement is disputed, he may require the costs of re-measurement to be deposited. He has to publish the survey papers and the record. He has to send a copy to the landlord and to the tenant. When he has done that, he fixes a day to determine the partition of the land into several estates.

Now, it will be reasonably clear from this that, from the point of view of evidence, the statement of area as regards a tenancy may be of no great value as against the tenant. Indeed, in one of the cases which were cited to us, this was pointed out: *Janki Dobey* v. *Kirtarath Roy* (1). But apart from the mere value of evidence, it seems to me that there is a question of principle, whether or not it can be said of such a measurement that it is an occasion upon which the rent is assessed or adjusted. In my opinion, it is not such an occasion and, while I am not disposed to dispute that the settlement under Chapter X of the Bengal Tenancy Act may be such an occasion, I think it would be extending the principle of the case decided by the Patna High Court, if we were to hold that on the basis of this measurement the landlord is entitled to additional rent. It has to be remembered that we are dealing, as the Patna High Court was dealing, with a

(1) (1908) 13 C. W. N. 93, 94.

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case where there is nothing to show when the tenancy was created, how the rent was assessed, whether the rent was a consolidated rent or whether assessed at a certain rate per *bigha* and whether there was any measurement of the holding at the inception of the tenancy. In these circumstances, it seems to me that, on the authority of the case-law and on principle, it is necessary for the landlord to base his claim upon some measurement on the basis of which the rent was assessed or adjusted, otherwise we should be bound to hold that if at any time any reliable measurement was made of a tenant's land and if at any subsequent time it was found that he was in possession of a greater area the landlord would have made out a case *prima facie* for additional rent. No case in this Court has ever gone so far.

In my judgment the ground upon which the learned Special Judge based his decision is incomplete and taken by itself incorrect, but the result at which he has arrived is correct. I think, in these circumstances, that the appeal should be dismissed with costs. We assess the hearing-fee at two gold mohurs.

MITTER J. I agree.

S. M.

Appeal dismissed.