APPELLATE CIVIL.

Before S. K. Ghose J.

1930

Feb. 20.

MOHITKRISHNA KUNDU

v.

MAHENDRANATH GUHA.*

Rent—Rent payable partly in cash and partly in kind—Value of paddy stated in pâttâ—Mourâsi mokarrâri pâttâ *of agricultural land, construction of.*

A *pâttâ* for a *mourâsi mokarrâri* lease of a plot of agricultural land granted by the landlord in 1905 fixed, *inter alia*, the annual cash rent payable by the tenant to be Rs. 27-12 and 10 *ârhis* of *gulâ* paddy, the price whereof was stated therein to be Rs. 10. It also provided for two kinds of penalties for defaults of payments of such rent, namely, for defaults of cash rent interest would be realisable, and for defaults of paddy rent damages would be realisable. In a suit by the landlord for recovery of arrears of rent from the tenant on the basis of the aforesaid *pâttâ*,

held: (1) that the tenant was primarily liable to pay annually the arrears of rent at the rate of Rs. 27-12 in cash and 10 *ârhis* of *gulâ* paddy in paddy rent;

(2) that the parties to the *pâttâ* intended that the aforesaid cash rent and the paddy rent payable by the tenant must be kept separate;

(3) that the paddy rent was not illusory but real;

(4) that, in default of payment of the said paddy rent, the landlord was entitled to get the value of the paddy rent as fixed in the *pâttâ* (Rs. 10 only) therefor and not the market value of 10 *ârhis* of paddy;

(5) that only in case of the tenant not being in possession of any paddy to deliver or to be attached he would be entitled to pay the value of the *gulâ* paddy rent as fixed in the *pâttâ* in addition to the cash rent.

Asutosh Mukerjee v. *Haran Chandra Mukerjee* (1) followed.

SECOND APPEAL by the defendant.

The facts are fully set out in the judgment.

Pyarilal Chatterji and *Bankimchandra Ray* for the appellant.

Narendrachandra Basu and *Shyamadas Bhattacharya* for the respondents.

S. K. GHOSE J. Plaintiffs sue to recover arrears of rent in respect of a *jamâ* of Rs. 27-12 in cash and 10 *ârhis* in *gulâ* paddy. The defence is that, under

* Appeal from Appellate Decree, No. 916 of 1928, against the decree of L. B. Chatterji, Additional District Judge of 24-Parganas, dated Dec. 8, 1927, confirming the decree of Charuchandra Basu, Munsif of Basirhat, dated Feb. 17, 1927.

(1) (1919) I. L. R. 47 Calc. 133.

the terms of the *kabuliyat*, plaintiffs are entitled only to a consolidated rent of Rs. 37-12. The courts below have construed the *kabuliyat* and agreed in holding against the defence. They have held that the defendant is liable to pay Rs. 27-12 and 10 *ârhis* of *gulâ* paddy, according to the current market value, which is found to be Rs. 50 a *bish*. The present Second Appeal is by the defendant.

The decision will turn on the construction of the *pâttâ*, Exhibit A, which is of the year 1905. It describes the holding as consisting of an area of 23 *bighâs*, 10 *cottâs*, with an annual cash rent of Rs. 27-12 and (according to a certain measure) 10 *ârhis* of *gulâ* paddy, "the price of which is Rs. 10." The total, including the price of the paddy, is fixed at a *jamâ* (*dhârya*) of Rs. 37-12. The document further recites that the lease, which is created out of a pre-existing lease of 1889, will form a *mokarrârî mourâsi kâyemi* tenancy and "Rs. 27-12 in cash rent "and the paddy rent of 10 *ârhis* will not be enhanced." There is a *selâmi* of Rs. 150 and two kinds of penalties are provided for, namely, for default of cash rent interest will be realisable, and for default of paddy rent *bârhi* or damages will be realisable, and there are the usual provisions that the paddy will be carried to the house of the landlord and so forth. As I read the *pâttâ*, it is clear that it was intended that the cash rent of Rs. 27-12 and the paddy rent of 10 *ârhis* of *gulâ* paddy should be kept separate, and the schedule also provides that the paddy is to be delivered in *Falgun* and cash rent is to be paid in 4 *kists*. In 1922, there was a compromise between the parties in an execution proceeding and the *solenâmâ* describes the tenancy in similar terms, namely, that the rent is Rs. 27-12 and "10 *ârhis* of "paddy of the value of Rs. 10," the total rent being Rs. 37-12 in a *mourâsi mokarrâri jamâ*. From this also, it is clear that the paddy rent was meant to be a real rent, that is to say, the tenant was liable to deliver paddy in addition to paying cash rent. Now, the question has arisen as to what would be the value

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of the paddy so payable, in case of failure to deliver it. The courts below have taken the contract to mean that the paddy would be valued at the current market rate. But the document itself puts the value at Rs. 10 and I prefer to follow the authority of the case of *Asutosh Mukerjee* v. *Haran Chandra Mukerjee* (1), and hold that the parties intended that Rs. 10 should be fixed as the value of the paddy rent. In that case, Sanderson C. J. remarks as follows: "In the next "place, the parties should be held to that which they "have said in the contract and I do not see why the "court should speculate and as a result of that "speculation arrive at the conclusion that the "important provision to which I have referred had "been inserted merely for the purpose of determining "the registration fee. I think there might be very "good reason for the parties having fixed the rent— "the parties may have thought that it would be more "prudent, as between themselves, to fix the amount "which should be taken as the value of the paddy "rather than have a dispute upon each occasion as to "the market value of it, in case it were not delivered." I consider that these remarks apply to the terms of the present contract and I take it that the parties fixed Rs. 10 as the amount to be payable in case of non-delivery of the paddy rent.

But this does not conclude the question which is at issue between the parties, because, although the paddy rent has been valued at a certain figure, it does not follow from the contract that the tenant may, at his sweet will, dispense with the payment of paddy rent and pay only the money value mentioned in the *pâttâ*. In that case, the paddy rent will be illusory, and the tenant need never pay paddy rent, but may go on paying Rs. 10 as provided for. I discern some indication of this principle in the remarks of N. R. Chatterjea J. in the case of *Hem Chandra Jelia* v. *Satya Kinkar Sen* (2), where he sought to distinguish the case of *Asutosh Mukerjee* (1) by saying that "Rs. 52

(1) (1919) I. L. R. 47 Calc. 133, 139. (2) (1925) 43 C. L. J. 171, 175.

"is not stated to be payable in the event of non-"delivery of the paddy." In the present case also, there is no provision in the *pâttâ* that Rs. 10 will be payable in the event of non-delivery of the paddy. On the contrary, the paddy rent is meant to be a real rent, as I have mentioned already. The learned advocate for the appellant relies on the case of *Official Trustee of Bengal* v. *Benode Behari Ghose Mal* (1). But there, the distinctive feature of the contract was the word "or" which seems to have made all the difference. There is another case *Bangshiram Mandal* v. *Prasannomoyi Debi* (2). In that case, there is a stipulation in the *pâttâ* that, if, for unavoidable reason, the tenant is unable to pay the paddy, he is to pay its market price at a certain rate. It was held that this stipulation was too vague to be acted upon. In the present case, I am unable to say that the contract goes so far as to give the tenant an option to pay 10 *ârhis* of *gulâ* paddy or Rs. 10 in cash, just as he likes. The primary liability is to pay 10 *ârhis* of *gulâ* paddy, and only if he can show that he is unable for any reason to deliver the paddy, he is then liable to pay Rs. 10.

The question of interpretation of agricultural leases in terms of paddy rent has been a vexed one, and decisions have not been uniform, for the simple reason that each such contract has got to be interpreted on its own merits. But, when dealing with such leases drawn up in the *mofussil*, it is a good rule that, in case of difficulty, one should try to get at the real intention of the parties by taking a reasonable view of the contract as a whole, rather than follow some artificial doctrine of construction. There is no charm in the words "*mokarrâri mourâsi kâyemi*" or "*jamâ dhârya*," when whole passages occur setting forth the nature of the stipulation. In the present case, the difficulty has been, as is very often the case, with regard to the cash value of the paddy rent and the liability of the tenant to pay either of them. On both points, the view above taken seems to be the most

(1) [1925] A. I. R. (Calc.) 114. (2) [1928] A. I. R. (Calc.) 166.

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reasonable, as being the most in consonance with the requirements, I might say, the equities, on both sides, for surely it was not intended that the tenant should escape liability when he was in a position to give paddy, or that he should be liable to pay its cash value at the current market rate when, owing to scarcity for instance, there was dearth of paddy and the price would be high.

In this view, it seems to me that the proper decree will be that the plaintiff will be entitled to realise cash rent of Rs. 27-12 and paddy rent of 10 *ârhis* for the years 1329 to 1332 B.S. If it be found that the defendant has no paddy to deliver, or there is no paddy to be attached, the defendant will be liable at the rate of Rs. 10 a year in default of paddy rent. The decree of the lower appellate court will be modified accordingly. The plaintiffs will get their costs in all courts.

Decree modified.

A. K. D.