

APPELLATE CIVIL.

Before Coutts and Das, J.J.

MAHARAJA BAHADUR KESHO PRASAD SINGH

v.

RAMJAS PANDE.*

July, 20.
1922.

Bengal Tenancy Act, 1885 (Act VIII of 1885), section 50(2) and section 115—Presumption as to fixity of rent, whether arises after publication of Record-of-Rights—Proof of fixity of rent, whether payment for 33 years is sufficient.

After the publication of the Record-of-Rights the tenants are not, in view of section 115 of the Bengal Tenancy Act, 1885, entitled to the benefit of the presumption which arises under section 50(2), and, therefore, in order to establish that they are entitled to their holdings on payment of a fixed rent in perpetuity, they must prove by evidence that they have held the land at a rate of rent which has not been changed since the time of the permanent settlement.

Prithi Chand Lal Chowdhury v. Sheikh Mohammad Tahir(1) and *Gulub Misser v. Kumar Kalanand Singh*(2), not followed.

Prithi Chand Lal Chowdhury v. Basarat Ali(3), *Harikar Persad Bajpai v. Ajub Missir*(4), *Har Lal v. Mussammatt Gohri*(5), *Gurcharan Nand v. Sarab Ali*(6) and *Jagdeo Narain Singh v. Bhagwan. Mahto*(7), followed.

The production of rent-receipts shewing payment of rent at an uniform rate for 33 years is not sufficient to prove that the rate of rent has not changed since the date of the permanent settlement.

Appeal by the plaintiff.

Suits under the Bengal Tenancy Act, 1885, for enhancement of rent. The facts of the case material to this report are stated in the judgment of Coutts, J.

*Appeal from Appellate Decrees Nos. 544-546 of 1921, from a decision of M. Saiyid Hasan, Subordinate Judge of Shahabad, dated the 11th December, 1920, modifying a decision of Babu Parmeshvar Dayal, Munsif of Buxar, dated the 29th August, 1919.

(1) (1916) 1 Pat. L. J. 67.

(2) (1910) 12 Cal. L. J. 107.

(3) (1910) I. L. R. 37 Cal. 30, F.B.

(4) (1918) I. L. R. 45 Cal. 930.

(5) (1910) 6 Ind. Cas. 942.

(6) (1919) 52 Ind. Cas. 79.

(7) (1920) 54 Ind. Cas. 672.

Kulwant Sahay and Nirsu Narain Sinha, for the appellant.

Parmeshwar Dayal, for the opposite party.

COURTS, J.—“These appeals arise out of suits for enhancement of rent. The suits have been dismissed in both the Courts below and the plaintiff has appealed.

The first point that arises is whether, in view of the provisions of section 115, the tenants are entitled to the benefit of the presumption which arises under section 50(2) of the Bengal Tenancy Act. Both the Courts below, on the authority of *Gulab Misser v. Kumar Kalanand Singh* (1) and *Prithi Chand Lal Choudhury v. Sheikh Mohammad Tahir* (2), have held that the tenants are entitled to the benefit of the presumption. These decisions, however, have been overruled by a number of decisions both in the Calcutta High Court and in this Court and I need only refer to the following cases: *Prithi Chand Lal Choudhury v. Basarat Ali* (3), *Harihar Persad Bajpai v. Ajub Missir* (4), *Har Lal v. Mussammatt Gohri* (5), *Gurucharan Nand v. Sarab Ali* (6) and *Jagdeo Narain Singh v. Bhagwan Mahto* (7). In view of these decisions which, in my opinion, embody the correct view of the law, the tenants are not entitled to the benefit of the presumption; and, in order to establish that they are tenants at fixed rent in perpetuity, they would have to establish by evidence that they have been holding at a rate of rent which has not been changed since the time of the permanent settlement.

It has been urged that the learned Subordinate Judge has found as a fact that the tenants have established this. It is true that the learned Subordinate Judge has said in his judgment that:

“ apart from any presumption under section 50 of the Bengal Tenancy Act, it can be safely held that the defendant's status is *Sharahmojan* at rent fixed in perpetuity ”.

(1) (1910) 12 Cal. L. J. 107.

(3) (1910) I. L. R. 37 Cal. 30, F.B.

(6) (1919) 52 Ind. Cas. 79.

(2) (1916) 1 Pat. L. J. 67.

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How he arrives at this conclusion, he does not say, but it would appear that he comes to this conclusion because the tenants have produced rent-receipts covering a period of from 25 to 33 years. It is contended by the learned Vakil for the respondents that in view of the fact that the tenants have proved that they have paid rent at a fixed rate for from 25 to 33 years the Court is entitled to presume that they have been paying at fixed rate from the time of the permanent settlement. I am unable to accept this contention. If it were correct it would lead to this—that a tenant, although he was not entitled to the presumption which arises under section 50(2) of the Bengal Tenancy Act, would be entitled to prove that he had paid rent at the same rate for, say, 21 years and would then be entitled to what has been called a natural presumption in his favour. This could clearly not be so. No such presumption arises. The decision of the Court below is clearly wrong and must be set aside. I would accordingly set it aside and remand the cases for rehearing and for decision as to what the amount of enhancement should be. The appellant is entitled to the costs of these appeals.

DAS, J.—I agree.

Cases remanded.

FULL BENCH.

Before Dawson Miller, C.J., Mullick and Jwala Prasad, J.J.

SHEBALAK SINGH

v.

KAMARUDDIN MANDAL.*

Code of Criminal Procedure, 1898 (Act V of 1898), section 144(4)—District Magistrate's power to rescind order of

*Criminal Revision No. 298 of 1922 against an order of Y. A. Godbole, Esq., District Magistrate of Purnea, dated the 3rd May, 1922, affirming an order of Babu C. De, Subdivisional Magistrate of Purnea, dated the 11th April, 1922.