

1869

BINDUBASINI
DERI
v.
PATIT PABAN
CHATTERJEE
PADHYA.

the plaintiff should exceed those rights. On the other hand if the plaintiff has a right as joint owner to have those buildings removed she may exercise it. But whether she has or has not is not a question in this suit, all she is entitled to is a decree for possession in the usual form.

Before Mr. Justice Norman and Mr. Justice E. Jackson,

1869
June 30

RANI SWARNAMAYI (PLAINTIFF.) v. GAURI PRASAD DAS
(DEFENDANT.)*

Suit for Enhancement of Rent—Intermediate Tenants—Deduction.

A deduction of 15 per cent from the gross rents is a fair and equitable mode of assessing the rent payable by an intermediate tenant in a suit for enhancement. Intermediate tenures should be assessed at a rate so as to allow the tenant a reasonable profit, and not at a rate at which actual cultivators are assessed.

THIS was a suit for enhancement of rent.

The High Court (Seton-Karr and Pandit, JJ.) in special appeal, remanded the case, holding that as the defendant was an intermediate holder between the zemindar and many ryots, an assessment fixed for his lands at the full rate of rents payable by cultivating ryots, was not fair and equitable; that the law did not authorize the plaintiff to assess him so as to render the holding of the lands by the defendant altogether void of all reasonable profits. The case was therefore remanded to the lower Appellate Court with directions to adopt rules suitable to the intermediate position of the defendant.

The lower Appellate Court held that a deduction of 15 per cent. upon the gross assessment would be fair and equitable, and accordingly passed a decree.

The plaintiff appealed to the High Court.

Baboos *Srinath Das, Bhagabati Charan Ghose, and Matilal Mookerjee* for appellants.

Baboos *Kishen Sakha Mookerjee and Ramesh Chandra Mitter* for respondent.

* Special Appeal, No. 410 of 1869, from a decree of the Officiating Judge of Rungpore, dated the 24th November 1868, modifying the decree of the Deputy Collector of that district, dated the 14th July 1868.

NORMAN, J.—This is a suit for rent of 8040 bigas of land at enhanced rates. The case was remanded to the first Court to try what would be a fair and equitable rate for a tenant in the position of the defendant.

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We are of opinion that the decision of the Judge is perfectly correct, and proceeds on principles of good sense. In the first place he allows to the defendant who occupies a large area of land, and who is in point of fact very much in the position of a talookdar, a deduction of 15 per cent. from the gross rents which cultivating ryots would pay. He computes this by allowing 8½ per cent. for collection charges, and 6½ per cent. for profits. If the case had rested there, we should have thought that 6½ per cent. would not be enough to enable a man to live comfortably, and to provide against bad seasons and bad tenants. It appears however that the defendant does actually realize for bastu and other lands rates larger than those that have been allowed in the estimate, and therefore under the circumstances of this particular case we cannot say that in this case 15 per cent. is not a fair allowance.

The defendant also claimed under a custom locally known as “*Bishun kancha*,” a deduction of 2 katas per biga for certain lands called “*dokundah*” lands, that is lands bearing two crops in the year, as it is necessary that some of these lands must be left uncultivated for seed beds.

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On these grounds we affirm the decree of the lower Appellate Court, and dismiss this appeal with costs.

Before Mr. Justice E. Jackson and Mr. Justice Mitter.

NARATTAM DAS CHOWDHRY AND ANOTHER (DEFENDANTS) v.
ROSO PYARI CHOWDHRAIN (PLAINTIFF.)*

Suit for Kabuliat—Objection not taken in Court below—Special Appeal.

1869
July 2.

In a decree for a kabuliat, the term for which it is to remain in force should not be fixed.

* Special Appeals, Nos. 446 and 447 of 1869, from the decrees of the Officiating Judge of Dinagepore, dated the 3rd December 1868, affirming the decrees of the Deputy Collector of that district, dated the 8th September 1869.