

1871  
April 1.

Before Mr. Justice Kemp and Mr. Justice Glover

SRIMATI JANNABA, (DEFENDANT) v. GIRISH CHANDRA CHUCKER-  
BUTTY (PLAINTIFF)\* (1).

Rent—Enhancement—Act X of 1859, s. 13—What sufficient Notice of Grounds

Baboos Ramesh Chandra Mitter and Nalit Chandra Sen for the appellant.

Mr. Cowie (with him Baboos Kali Mohan Das, Durgamohan Das, and Hem Chandras Banerjee) for the respondent.

THE judgment of the Court was delivered by

GLOVER, J.—This was a suit to enhance the rent of an intermediate tenure styled a “*tukshishi*” talook, after notice.

The defendant alleged that the talook had been held from the date of the perpetual settlement at a fixed rent which could not be enhanced; that as the rent had not varied for the twenty years previous to the institution of the suit the defendant was entitled to the presumption of law arising under section 4. Act X of 1859; that the notice served was informal; that the Collector's Court had no jurisdiction; and that the zemindar could not enhance the rent of the tenure, although he might put an end to its existence.

Both the Courts below found for the plaintiff. The Judge held that, although the rent paid by the defendant, had not varied for the twenty years preceding suit; it was clear that the talook had been created subsequently to the decennial settlement, and was not therefore protected from enhancement.

The first ground of special appeal,—namely, that “there being no agreement between the parties whereby the plaintiff was entitled to demand enhanced rent in the terms of his notice, the present suit must fail,” was not taken in the Court below, and cannot, we think, be allowed in special appeal.

The second is that the notice served by the plaintiff was informal, and does not disclose any legal ground of enhancement.

The notice is to this effect: “You, Srimati Jannoba, hold a *tukshishi*, talook, the rent of which has always been of a varying nature; that you have been called upon to make a settlement with your landlord at the pergunna rates; that by the immemorial custom of the pergunna, the holders of such talooks as yours, after deducting 10 per cent. of the fair jumma for collection charges and 10 per cent. for malikana, are bound to pay the residue as rent to the zemindar; that you hold so much land, which, according to the rates paid for similar kinds of land in the same and adjacent villages, ought to pay such and such a gross rental; from this deducting your 20 per cent. on account of

\* Special Appeals, Nos. 1944 and 1963 of 1870 from the decrees of the Judge of Tipperah, dated the 25th July 1870, affirming decrees of the Deputy Collector of that district dated the 25th April and 13th May 1870, respectively,

(1) See *Kumar Paresh Narayan Roy v. and Shemsulisman v. Bunshidhar Dutt, Gaur Sunda Bhumik*, 6 E. L. R., App., 154; 7 B. L. R., App., 32.

malikana and collection charges, the remainder, so much, ought to be paid to me as my rent, and you are hereby called upon to pay that amount."

It is argued that this notice is bad in law, inasmuch as it does not set forth the grounds of enhancement with sufficient clearness; that it ought to have stated that the amount at which the zemindar had calculated the gross assets, was recoverable by the talookdar from the ryots in the same proportion, they not being protected from the middleman's right to enhance, any more than the middleman was protected from the zemindar.

In support of this contention we have been referred to the case of *Dinanath Das v. Gugan Chandra Sen* (1), decided by this Court on the 30th August 1870. Mr. Justice Phear says in that case. "It is not a good ground

(1) *Before Mr. Justice Phear and Mr. Justice E. Jackson.*

*The 30th August 1870.*

DINANATH DAS AND ANOTHER  
(DEFENDANTS) v. GUGAN CHAN-  
DRA SEN (PLAINTIFF).\*

Baboo Mohini Mohna Roy<sup>o</sup> for the appellants.

The Senior Government Pleader and Baboo Kali Mohan Das for the respondent.

THE judgment of the Court was delivered by

PHEAR, J.—I think that the judgment of the lower Appellate Court, and indeed that also of the first Court, is wrong for error of law.

This suit is brought by the zemindar to recover arrears of rent, at enhanced rates, from the defendant, whom he admits to be the holder of a tenure other than a ryotee tenure.

Now I need not say that a zemindar is not entitled to recover back rents at enhanced rates from any tenant, unless he has previously given notice to that tenant of his intention to claim enhanced rates for some period succeeding the giving of the notice.

The lower Courts appear to think that this is a case of enhancement of rent of a tenure falling within the provisions of section 51, Regulation VIII of 1793, and that in such a case notice is not necessary. This is entirely a mistake. As for as I understand the law of this country, it never

has been the case that a zemindar could recover enhanced rates for a past time, in respect of which he had given no antecedent notice. Of course the case of his claiming a kabuliat for a future time at enhanced rates, involves different considerations, and possibly it was a decree affecting a case of this kind which misled the lower Appellate Court.

But not only must a notice have been given, as I have already stated, but since the passing of Act X of 1859, section 13 of that Act has made it necessary that the notice should bear, on the face of it, sufficient ground of enhancement.

It appears to me that the notice which is the foundation of the plaintiff's claim in this case is a bad notice, because it does not give a sufficient ground, that is to say, a good ground in law, for enhancement of rent.

As it has been translated to me it in effect runs thus:—"Out of the profits of the estate you are by the custom of the pergunna entitled to 10 per cent. for malikana and 10 per cent. for collection charges; all the rest I am entitled to; but the total rent which you can recover is Rs. 28 and 13 annas, according to the rates which prevail in the ground for lands of similar description. In other words, that the capabilities of the lands of your talook are such that you could if you chose make a profit out of it of Rs. 28 and 13 annas, and out of that you are entitled only to 20 per cent.; the remainder all comes to me."

If this be the true purport of the notice which was given, then I think that the notice is bad in law. It is not a good ground of enhancement of the rent of any tenure

\* Special Appeals, Nos. 918 and 919 of 1870, from the decrees of the Judge of Tipperah, dated the 25th February 1870, affirming the decrees of the Deputy Collector of that district, dated the 29th November 1869.

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