APPELLATE CIVIL.

Before Hon'ble Mr. R. F. Rampini, Acting Chief Justice, and Mr. Justice Ryves.

1908
June 1.

MANINDRA CHANDRA NANDI
v.
UPENDRA CHANDRA HAZRA.*

Lease—Bengal Tenancy Act (VIII of 1885), s. 29—Leases in contravention of s. 29 of the Bengal Tenancy Act—Effect of payment of rent for a number of years—Onus of proving increase of area.

Leases executed in contravention of the provisions of section 29 of the Bengal Tenancy Act are void and not voidable, though rent has been paid under them for a number of years.

Probat Chandra Gangapadhya v. *Chirag Ali* (1) referred to.

A contract of such a nature is not legal or operative to the extent of the enhancement allowed by the rent law.

Kristodhone Ghose v. *Brojo Gobindo Roy* (2) referred to.

When it is shown what the previous rent of the tenant defendant was, it is for the plaintiff to justify the enhancement of rent claimed, which is obviously in excess of the enhancement allowed by the Act.

SECOND APPEAL by Manindra Chandra Nandi (Maharaja of Cossimbazar) the plaintiff.

In the year 1297 B.S. Maharani Sarnamayee, the predecessor-in-interest of the present Maharaja of Cossimbazar, the plaintiff in these suits, purchased the *patni* interest in *mahal* Beldanga, thereby causing the *patni* to merge once more into the parent zemindari. Previous to that year, the *patni* had changed hands somewhat frequently. Considerable trouble between zemindar and tenants followed the Maharani's purchase of the *mahal*, disputes arising in connection with rates of rent, *khas khamar* lands of the zemindar, and other kindred questions. Matters came to such a pass that the District Magistrate was forced to intervene, and rents were subsequently

* Appeals from Appellate Decrees, Nos. 2388 and 2466 of 1906, against the decrees of A. W. Watson, Offg. District Judge of Murshidabad, dated Sept 12, 1906, reversing the decrees of Tarapada Chatterjee, Munsif of Berhampore, dated June 5, 1906.

(1) (1906) I. L. R. 33 Calc. 607. (2) (1897) I. L. R. 24 Calc. 895.

settled to which the principal tenants agreed. The amount of land held by the various tenants was ascertained by survey, rental payable thereon were assessed by the zemindar, and finally some 2,000 tenants executed *kabuliats* which bound them to pay rent at the rates thus determined. After the execution of these *kabuliats* whose execution had been preceded by the acceptance by the *raiyats* of *amanati* receipts, and by their signing *jardis* which showed the amount of, and the rates assessed upon, the lands held by them, rent appears to have been paid at the *kabuliat* rate for some years. But within two or three years previous to the institution of the suits, troubles again arose between the present landlord and his tenants, the tenants having ceased to pay rent, and applied to Government for a record-of-right. The Maharaja instituted these suits to realise rent on the basis of the *kabuliats* admittedly executed by them, alleging that these agreements were entered into by the tenants by way of settlement of disputes which had been up till then raging in the *mahal* between the plaintiff's predecessors and the *raiyats*, and with a view to render certain the amount of rent which each tenant was to pay in the future, and to avoid litigation. In short, the plaintiff alleged that there was a mere re-adjustment, but no enhancement of rent, and that therefore the claim must succeed.

The defendant contended, *inter alia*, that the *kabuliats* were executed by him under threat of oppression and duress, and that they were invalid under section 29 of the Bengal Tenancy Act.

The Munsif decreed the suits. On appeal, the decision of the Munsif was reversed. The plaintiff thereupon preferred these second appeals.

Dr. Rash Behary Ghose (*Babu Pramatha Nath Sen* and *Babu Hemendra Nath Sen* with him), for the appellant. The lease in question was the result of a settlement of disputes between the landlord and tenants in respect of rent and area. The so called enhancement was really the price of the compromise and for the privilege of transferability conferred. I could have ejected him. The agreement was not void, but only

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voidable. There was acquiescence for over 12 years, and he cannot question it now. The covenant is severable and I am entitled to enhancement up to 2 annas in the rupee: *Sheo Sahoy Panday v. Ram Rachia Roy* (1). The later cases are not based on sound principle.

The Advocate General (*Hon'ble Mr. Sinha*) and *Babu Naliniranjan Chatterjee*, for the respondent. The law on this point is settled: *Kristodhone Ghose* v. *Brojo Gobindo Roy* (2), *Mothura Mohun Lahiri* v. *Mati Sarkar* (3) and *Probat Chandra Gangapadhya* v. *Chirag Ali* (4).

Dr. Rash Behary Ghose, in reply.

Cur. adv. vult.

RAMPINI A.C.J. AND RYVES J. The two second appeals, No. 2388 and 2466, of 1906 are appeals against a decision of the District Judge of Murshidabad in suits for arrears of rent. The defendant is sued on the basis of two *kabuliats* executed by him in favour of the plaintiff on the 18th October 1894, which he now repudiates on the grounds (i) that they were obtained from him by oppression and threats, and (ii) that they are illegal, being contrary to the provisions of section 29 of the Bengal Tenancy Act.

Both the lower Courts have found that the *kabuliats* were not extorted from the defendant by oppression or threats, but were executed voluntarily by him. But the lower Appellate Court has held that the *kabuliats* are void, being contrary to the provisions of section 29 of Act VIII of 1885. It has been further held that the fact that the defendant has paid rent at the rate mentioned in the *kabuliats* for some time is immaterial, and that a decree which the plaintiff obtained against the defendant for the rent, which is the subject of dispute in the suit to which appeal No. 2466 relates, does not make the question of the rate of rent payable *res judicata*.

The plaintiff now appeals. On his behalf it has been urged (i) that the *kabuliats* are legal, being executed in settle-

(1) (1891) I. L. R. 18 Calc. 333.
(2) (1897) I. L. R. 24 Calc. 895.
(3) (1898) I. L. R. 25 Calc. 781.
(4) (1906) I. L. R. 33 Calc. 607.

ment of disputes which arose between the landlord and the defendant both as to the amount of rent payable and the area of the defendant's holdings ; (ii) that the enhancement agreed to in the *kabuliats* is only the price of the privilege of transferring holdings without the consent of the landlord conferred by the leases; (iii) that the leases are not void, but voidable, and that as the defendant has paid the rents stipulated for in them for many years without objection, he cannot now question them ; (iv) that the leases are at least good to the extent of the enhancement allowed by section 29 of the Act ; and (v) that the onus of proving that the plaintiff is entitled to additional rent for additional land has been wrongly thrown on the plaintiff. In appeal No. 2464, there is a further plea that the decree obtained by the plaintiff against the defendant on the 16th January 1905 has the effect of *res judicata*.

It appears to us that the appeals must fail on the findings of fact arrived at by the District Judge. He has found that the rent payable by the defendant prior to the execution of the *kabuliats* was Rs. 32 and that it now amounts to Rs. 63, and that consequently the *kabuliats* contravene the provisions of section 29 of the Act. He has further found that the defendant is now not in possession of more land than he originally held, so that the enhancement of rent cannot be justified under section 52, and finally, he has held that there was no dispute between the plaintiff and the defendant as to the rent and area of the defendant's holdings in settlement of which the *kabuliats* were executed.

It may be here explained that the provisions of section 29 of the Tenancy Act have always been obnoxious to the landlords of Bengal. Soon after the passing of Act VIII of 1885, they endeavoured to evade them by entering into compromises with their tenants. The ruling of this Court in the case of *Sheo Sahoy Panday* v. *Ram Rachia Roy* (1) gave some countenance to this practice to which recent legislation in Act I of 1907 (B.C.) is intended to put an end. But, however, all this may be, the application of the ruling in *Sheo Sahoy*

(1) (1891) I. L. R. 18 Calc. 333.

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Panday v. *Ram Rachia Roy* (1) followed in *Nath Singh* v. *Damri Singh* (2) to these cases is negatived by the finding of fact of the District Judge that there was no dispute between the plaintiff and the defendant, which the execution of the *kabuliats* now sued on, was intended to settle. That being so, they must be illegal and cannot be given effect to.

The plea taken by the learned pleader for the appellant that the illegal enhancement of rent agreed to in the *kabuliats* was but the price of the privilege of transferability of the holdings conveyed by the leases cannot prevail, because (i) this plea was never raised in either of the lower Courts, (ii) it is not shown that the holdings were non-transferable before the execution of the *kabuliats*, and (iii) it is not shown that there was any dispute between the parties as to the transferability of the holdings in settlement of which the *kabuliats* were executed.

It has been clearly held that the leases executed in contravention of the provisions of section 29 of the Act are void, not voidable: *Probat Chandra Gangapadhya* v. *Chirag Ali* (3). Rent has been paid under them in one case for about 11 years, but this does not make legal and operative an illegal and void contract.

It has also been held that a contract which is illegal and void as being contrary to the provisions of section 29 of the Act is not legal and operative to the extent of the enhancement allowed by the rent law: *Kristodhone Ghose* v. *Brojo Gobindo Roy* (4).

The onus of proving that the area of the land has not increased, has not, in our opinion, been improperly thrown on the plaintiff. We agree with the lower Court that when it is shown what the defendant's previous rent was, it is for the plaintiff to justify the enhancement of rent now claimed, which is obviously in excess of the enhancement allowed by the Act.

We have carefully examined the *ex parte* decree relied on by the plaintiff in appeal No. 2466. It is merely a decree for a

(1) (1891) I. L. R. 18 Calc. 333.
(2) (1900) I. L. R. 28 Calc. 90.
(3) (1906) I. L. R. 33 Calc. 607.
(4) (1897) I. L. R. 24 Calc. 895.

certain sum of money claimed for a certain period. It decides no question of the rate of rent payable by the defendant. It, therefore, has not the effect of *res judicata*.

We accordingly dismiss these appeals with costs.

Appeals dismissed.

S. M.

ORIGINAL CIVIL.

Before Mr. Justice Harington.

ATUL CHUNDER GHOSE
v.
LAKSHMAN CHUNDER SEN.*

1909
Feb. 23.

Attorney and Client—Attorney's Retainer, how revocable—Civil Procedure Code (Act XIV of 1882), ss. 2, 39—Continuance of Authority of Attorney—Bill of Costs—Cause of Action, accrual of—Limitation.

An attorney's retainer cannot be revoked by his client by a mere letter: it can be revoked only with the leave of the Court by a writing signed by the client and filed in Court, as provided in section 39 of the Code of Civil Procedure of 1882.

In the case of an attorney's costs, the cause of action arises when the work for which he was retained is completed and limitation begins to run from that time.

Coburn v. *Colledge* (1) followed.

Where the decree in the suit for which the attorney was retained, directed that the client should personally pay to other parties certain costs to be taxed:—

Held, that the attorney's authority continued after judgment and covered the taxation of these costs, and the retainer was not at an end until the issue of the *allocatur*.

Lady de la Pole v. *Dick* (2) referred to.

ORIGINAL SUIT.

THIS suit was instituted by an attorney for the recovery of the sum of Rs. 4,588-8 being the amount of his bill of costs remaining unpaid.

On the 18th December 1901, the plaintiff, Atul Chunder Ghose, was retained by certain members of the Sen family, Lakshman Chunder Sen, Gocool Chunder Sen, Gopal Chunder

* Original Civil Suit No. 616 of 1908.

(1) [1897] 1 Q. B. 702. (2) (1885) 29 Ch. D. 351.