

INDIAN LAW REPORTS. [VOL. XXXVII.  
APPELLATE CIVIL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and  
Mr. Justice Doss.

KISHORI MOHAN BOSE

v.

SHEIKH UJIR.\*

1910  
April 22.

*Landlord and Tenant—Enhancement of rent by addition of a rent-in-kind—  
Bengal Tenancy Act (VIII of 1885) s. 29.*

Section 29 of the Bengal Tenancy Act applies even where a money-rent is enhanced by the addition of a rent-in-kind.

SECOND APPEAL by the plaintiffs.

These two appeals arose out of two analogous rent suits and were tried jointly in both the lower Courts. Both the suits were based on registered *kabuliyats* alleged to have been executed by the defendants in favour of the plaintiffs. The claim in each case was both for money and paddy-rent, *viz.*, money-rents for 1313 B. S. and paddy-rents for 1312 and 1313.

The contention of the defendants was that they did not execute the *kabuliyats*, and that even if they did, they were void as contravening the provisions of section 29 of the Bengal Tenancy Act.

The Court of first instance decreed the suits in full, holding that the defendants did execute the *kabuliyats* and that they had failed to prove that the rents were enhanced by more than two annas in the rupee by the *kabuliyat*. On appeal, the lower Appellate Court found in favour of the defendants, both on the point of fact and of law, and modified the decrees of the first Court. It held, on taking into account both money and paddy-rent as claimed, that the *kabuliyats* contravened the provisions of section 29 of the Bengal Tenancy

\* Appeals from Appellate Decrees Nos. 1903 and 1985 of 1908, against the decrees of A. J. Chotzner, Additional District Judge of Mymensingh, dated July 6, 1908, modifying the decree of Taraknath Bose, Munsif of Netrakona, dated Feb. 29, 1908.

Act. In the second appeal to the High Court, it was contended, *inter alia*, that section 29 of the Bengal Tenancy Act "has no application to increase of rent into money-and-produce rent."

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*Babu Surendrachandra Sen* (with him *Babu Jyotiprasad Sarbadhikari*), for the appellants. Section 29 of the Bengal Tenancy Act is a penal section and ought to be strictly construed. In the absence of any such provision, the rent of an occupancy *raiyat* could be enhanced up to any limit by agreement of parties : so this section should be construed in such a way as not to prejudice the rights of a party which, but for such provision, he would have enjoyed. This section speaks of a money-rent, and consequently the enhancement by not more than two annas in the rupee contemplates an enhancement in *money only*. It cannot have any application to an enhancement in both *rent and kind*. In the present case, it is not possible to say whether the enhancement in *kind* is by more than two annas in the rupee, for, it is not possible to ascertain what the *money equivalent* of the enhancement *in kind* is ; it is only in a proceeding for commutation of rent under section 40 of the Act that it *may* be possible to say what the *money value* of the enhancement *in kind* would be, and even there the money value of the rent in *kind* need not necessarily be determined, as the prevailing rate of rent of the neighbouring holdings is also taken into consideration.

[JENKINS C.J. But see section 28 of the Act.]

*Maulvi N. Ahmed* (for *Maulvi R. Zahed*), for the respondent, was not called upon.

JENKINS C.J. This case comes before us by way of second appeal and arises out of a suit brought for recovery of an enhanced rent. The claim was allowed by the Court of first instance, but in the lower Appellate Court it was held that the plaintiffs were only entitled to get the rent and cesses admitted by the defendants. From the decree which followed on that judgment the present appeal is preferred, and it is contended that, having regard to the nature of the enhancement, there was

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no answer to the landlord's claim. The case has been argued before us with considerable ingenuity by Mr. Sen, and what he contends is that section 29 of the Bengal Tenancy Act has no application where a money-rent is enhanced by the addition of a rent-in-kind. The basis of that argument is, and has to be, that section 29 is throughout limited to a money-rent, and that the enhancement on which it places a limit is an enhancement by way of additional money-rent and not by way of an additional rent-in-kind. But this argument overlooks the operation of section 28 which says that, "where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act:" and if section 29 does not contemplate the possibility of the enhancement of a money-rent by the addition of a rent-in-kind, it is clear that a money-rent cannot be increased in that way. But assuming that money-rent can be enhanced by the addition of a rent-in-kind, it clearly must be subject to the limit imposed by that clause (b) of section 29. On the finding of the lower Appellate Court in this case, the additional rent does exceed the limit imposed by clause (b), with the result that it is irrecoverable.

On these grounds it appears that the decision of the lower Appellate Court is correct, and that the decree of that Court should be confirmed with costs.

This judgment will govern the other appeal.

Doss J. I agree.

*Appeal dismissed.*

S. M.