APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Sharfuddin.

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April 4.

GOPENDRA CHANDRA MITTER
v.
TARAPRASANNA MUKERJEE.*

Chaukidari Chakran land—Village Chaukidari Act (Beng. VI of 1870) s. 49—Assessment of rent by Collector—Right of landlord to claim fair and equitable rent.

The right of a landlord to claim rent, when making a settlement of resumed *chaukidari chakran* lands with a putnidar, is not restricted to the amount of assessment made by the Collector under s. 49 of the Village Chaukidari Act (Beng. Act VI of 1870); he is entitled to claim a fair and equitable rent.

Hari Narain Mozumdar v. *Mukund Lal Mundal* (1) and *Kazi Newaz Khoda* v. *Ram Jadu Dey* (2), referred to.

APPEAL by the defendants, Gopendra Chandra Mitter and another.

This appeal arose out of a suit brought by the plaintiffs as zemindars against the defendants, who were putnidars, to recover *khas* possession of certain resumed chaukidari chakran lands. The plaintiffs sought to recover possession of these lands on the grounds that the Collector having taken proceedings under Bengal Act VI of 1870 made over those lands to the plaintiffs as part of their zemindary, and that the defendants had no right to hold these lands against them. The plaintiffs, in the alternative, claimed to recover fair and equitable rent, should the defendants be found to be entitled to retain possession of those lands.

The putnidars pleaded, *inter alia*, that they were entitled to retain possession of the chaukidari chakran lands, and that the plaintiffs could not demand a higher rent from them than the

*Appeal from Original Decree, No. 260 of 1907, against the decree of Aghore Chandra Hazra, Subordinate Judge of Burdwan, dated Feb. 12, 1906.

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amount assessed by the Collector under section 49 of Bengal Act VI of 1870.

The Court below dismissed the plaintiffs' claim for *khas* possession, but held that they were entitled to recover from the defendants a fair and equitable rent.

Against this decision the defendants appealed to the High Court.

Babu Nilmadhab Bose, Babu Dwarkanath Mitra, Babu Sailendra Nath Palit, Babu Narendra Chandra Bose and *Babu Naresh Chandra Sinha*, for the appellants.

Babu Naliniranjan Chatterjee and *Babu Nanda Lal Banerjee*, for the respondents.

Cur. adv. vult.

BRETT AND SHARFUDDIN, JJ. The present appeal arises out of a suit brought by the plaintiffs as zemindars of lot Chanak against the defendants Nos. 1 and 2, the putnidars of 9 mouzahs included in that towji. The plaintiffs sought to recover *khas* possession of 201 bighas odd of resumed chowkidari chakran lands lying within those 9 mouzahs and for *wasilat*, or, in the alternative, if the defendants should be found entitled to retain possession of the lands, to recover fair and equitable rents of the lands from the defendants. The rent they claimed was Rs. 500 for the 201 bighas of land. The defendants Nos. 1 and 2, the putnidars, contended that they were by law entitled to the possession of the chaukidari chakran lands after their resumption by the Collector, and that the plaintiffs, as zemindars, could not demand a higher rent from them than the amount which was assessed by the Collector under section 49 of Bengal Act VI of 1870. The lower Court has dismissed the plaintiffs' claim for *khas* possession of the lands, holding that, under the condition of the putni lease, the putnidars are entitled to settlement of those lands from the landlords in preference to anybody else. The Subordinate Judge, however, held that the plaintiffs were entitled to recover from the defendants a fair and equitable rent, and he fixed the same at Rs. 408-8 for the 201 bighas of land. We may observe

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that that was the total rent which was fixed by the Collector, half of which he assessed, under section 49 of Bengal Act VI of 1870, as the amount to be paid by the zemindars to the Chaukidari fund. It has not been seriously contested before us that the lower Court is not right in its conclusion that the putnidars, under the terms of the lease, are entitled to a settlement of the resumed chaukidari chakran lands; but the points which have been urged in support of the appeal are—(*i*) that the plaintiffs are not entitled to demand a higher rent from the putnidars than the amount assessed by the Collector under section 49 of Bengal Act VI of 1870, and (*ii*) that, even if the plaintiffs are entitled to more, the amount assessed by the lower Court is excessive. It is admitted that the decision on these points must to a considerable extent depend on the construction of the putni lease or kabuliat. The present defendants are the purchasers of the rights of the original putnidar. The putni kabuliat, dated the 18th Jaistha 1280 (30th May 1873) was originally executed by one Srimanta Roy in favour of the predecessor-in-interest of the present plaintiff. That kabuliat has been produced in evidence, and Nilkant Roy, son of Srikant Roy, the original lessee, has been examined on behalf of the defendants. The clause in this kabuliat, which is construed differently by the appellants and the respondents, runs as follows :—

"চৌকিদারী চাক্‌রাণ জমা কিম্বা জেলার তপশীল থানার চাকরাণ জমা সদর বাজেয়াপ্ত হইলে যে জমায় সরকার বাহাদুর হইতে আপনকার বন্দোবস্ত করিয়া লইয়া আমাকে যে জমায় বন্দোবস্ত করিবেন সে জমায় আমি বন্দোবস্ত করিয়া লইতে স্বীকার না হইলে অন্য ব্যক্তিকে বন্দোবস্ত করিবেন, তাহাতে আমার ও আমার ওয়ারিসানের কোনও ওজর আপত্তি চলিবে না।"

On behalf of the appellants, it has been contended that the meaning of this passage is that, if the putnidar refused to take settlement of the chaukidari chakran lands from the zemindar at the same jama as that at which settlement of the same was made with the zemindar by the Government, then the zemindar would be entitled to settle the lands with other persons: and it has been argued that from this clause it is clear that the putnidars are entitled to a settlement from the landlords at

the same rent as the amount which was fixed by the Collector under section 49. On behalf of the respondents, this passage has been translated differently, and it is said to mean that if the chaukidari chakran lands be resumed by Government, and if the Government settles the lands with the zemindar, then, if the zemindar offers to settle the same with the putnidar at a given rental, and the putnidar refuses to accept that rental, the zemindar may settle the lands with other persons. It is argued that this means that, if the zemindar after taking settlement makes an offer to the putnidar of a settlement of the lands at a certain rent, and the putnidar refuses to accept that rent, then the zemindar may settle the lands with other persons; that is to say, that under this clause in the lease, the landlords have the option of fixing the amount of rent, and if the defendants do not accept it, the landlords would be able to settle the lands with other persons. Of course, this right of the landlords to settle the lands with other persons would be subject to the right of the plaintiffs to have the settlement concluded on fair and reasonable terms. We have given our best consideration to the passage in question in the kabuliat, and we think that the view taken by the lower Court is correct, and that it does not bind the landlords to settle the resumed chaukidari chakran lands with the putnidars at the same amount at which the assessment for the purpose of the chaukidari tax has been made on the land under the provisions of section 49 of Bengal Act VI of 1870. Apart from this construction which we place on the terms of the lease, we have to add that we have lately held in the case of *Rajendra Nath Mukerjee* v. *Hiralal Mukerjee** (S. A. 1446 of 1907), that the rent which a landlord is entitled to claim when making a settlement of resumed chaukidari chakran lands with a putnidar, is not restricted to the amount of the assessment made by the Collector under section 49 of Bengal Act VI of 1870, and we have pointed out that this view is supported by principle and by authority. In particular, we referred to the decisions of this Court in the cases of *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (1) and *Kazi Newaz Khoda* v.

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Ram Jadu Dey (1). The learned pleader for the appellants has made a calculation on the basis of the principle suggested in the former of these two cases, with the result that the extra rent to which the landlords would thus be entitled in the present case comes to Rs. 392-11-2, which is only Rs. 15 less than the rent fixed by the lower Court.

The learned pleader, however, contends that the determination of the question of the amount of rent, which the zemindars are entitled to demand on the settlement, must depend mainly on the terms of the contract between the parties as evidenced by the putni lease or kabuliat. We have already given our reasons for holding that the passage in the kabuliat, relied on by both parties, cannot fairly be construed to mean that the rent must not exceed the assessment made by the Collector. But the learned pleader for the appellants has argued that it is clear, from the terms of the kabuliat, that the putnidars were to have the full benefit of any increase to the profits of the lands covered by the putni lease which might accrue subsequently to the lease, because the zemindars, under the terms of the lease, settled the putni rent at the full amount of the then profits, and in addition took a bonus of Rs. 4,000 from the putnidars. Now, it is clear that the profits from the chaukidari chakran lands were not taken into consideration in determining the rent at the time when the putni was created, and the fact that in respect of the other lands the putnidars agreed to pay as rent the full amount they then were entitled to collect goes rather to support the view contrary to that advanced for the appellants, and to suggest that, if these profits had been included, the full profits would have been demanded as rent. We agree with the lower Court that the evidence of Nilkanta Roy, the son of the original putnidar, is not true, and is worthless. It is impossible to believe him when he says "we took the said putni settlement without any profit on payment of the said sum of Rs. 4,000 as *salami*, considering that, on the resumption of the chaukidari lands, we would get the said lands." The putni lease was given in 1874, and the chaukidari lands were not

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resumed till twenty-five years afterwards! It seems to us perfectly clear that, at the time the lease was granted, it was well known that the nominal rents did not represent the actual profits of the putnidars, and this, indeed, is supported by the evidence given by the plaintiffs to prove that no less than Rs. 1,360 has been realized by the putnidars as *salami* for settling a portion only of the resumed lands since their resumption.

The lower Court, in fixing a fair and equitable rent which the zemindars are entitled to demand from the putnidars, has accepted the rent as determined by the Collector at the time of resumption. We have already noticed that that sum exceeds by Rs. 15 only the rental arrived at on the basis of the principle suggested in the case of *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (1), and, in the circumstances of the case, we see no reason to differ from the lower Court that Rs. 404-8 is a fair and equitable rent which the zemindars, the plaintiffs, are entitled to receive from the defendants for the 201 bighas 14 cottas of resumed chaukidari chakran lands.

We, therefore, confirm the judgment and decree of the lower Court and dismiss the appeal with costs.

Appeal dismissed.

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(1) (1900) 4 C. W. N. 814.