

Privy Council Appeal No. 95 of 1927.

Bengal Appeal No. 56 of 1925.

Mohendra Nath Biswas and others - - - - - *Appellants*

v.

Baikuntha Nath Roy Chowdhury and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 27TH NOVEMBER, 1928.

Present at the Hearing :

VISCOUNT SUMNER.

LORD WARRINGTON OF CLYFFE.

SIR JOHN WALLIS.

[*Delivered by* VISCOUNT SUMNER.]

This is an appeal from the High Court of Bengal, reversing a decree of the Subordinate Judge of Khulna. The claim is under Section 52 of the Bengal Tenancy Act of 1888, to have additional rent assessed in respect of land held by the defendants, who are inferior tenure holders in respect of land in excess of the area for which rent had been previously paid by them.

No question of law arises. The issue was whether the area, in respect of which the plaintiffs or their predecessors had created the inferior tenure, was the whole *mauza* Subkhali, which it was admitted they were entitled to, or was a small area, beyond the boundaries of which the defendants have pushed their cultivation.

The case for the defendants was that the area which they were to cultivate was whatever was cultivatable in the entire *mauza* and that there was no additional area, which they had cultivated in excess of that area.

On an investigation of the facts the High Court came to the conclusion that the terms could not be varied, that for some seventy years the rent had been uniformly paid at the same rate,

and it had been known by persons making surveys that a larger area was in cultivation than that which the plaintiffs now alleged was the quantity which was the subject of the under-tenancy, and that, nevertheless, during the whole of that period no attempt had been made, either by legal proceedings or otherwise, to claim additional rent such as is claimed in the present suit.

The inference drawn by the High Court, differing from the Judge of the Subordinate Court, was that such a history was only consistent with the original inferior tenure having been one applicable to the whole of the *mauza*, which was accordingly the area over which the right extended, and that this under-tenure was created at the original rent, which was the rent that had been paid ever since, so that there was nothing additional, within the meaning of the section, in the way of new cultivation added from time to time.

Their Lordships have come to a clear conclusion that, for the reasons given by the High Court, to which they do not desire to add anything, the judgment at which they arrived was right, and they will therefore humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

MOHENDRA NATH BISWAS AND OTHERS

2.

BAIKUNTHA NATH ROY CHOWDHURY AND
OTHERS.

DELIVERED BY VISCOUNT SUMNER.

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