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(1890) 02 PRI CK 0002

Privy Council

Case No: None

Hemanta Kumari Debi	APPELLANT
Vs	
Brojendro Kishore Roy Chowdhry	RESPONDENT

Date of Decision: Feb. 25, 1890

Citation: (1890) 17 ILRPC 876

Hon'ble Judges: Macnaghten, B. Peacock, R. Couch, JJ.

Judgement

R. Couch, J.

1. This is an appeal from a decree of the High Court at Calcutta in a suit for enhancement of the rent of a taluk which was instituted in July 1882. The plaintiff is entitled to a 10-annas share of the zemindari on which the taluk was dependent; and another person is entitled to a 4-annas share.

2. The only ground of defence which it is necessary now to notice is that a deed of compromise was executed in August 1825, by virtue of which the defendants allege that the rent of the taluk was permanently settled. That deed was executed by Rani Bhubanmoyi Debi, who was the widow of Raja Juggut Narain, to whom the property had belonged, and who had adopted, before the execution of the deed, Harendra Narain Roy, the grandfather of the plaintiff.

3. The circumstances under which this deed of compromise was executed are these. Some time before March 1823, a suit was brought by Rani Bhubanmoyi Debi and Krishen Indra Narain Rai, the owner of the other 4-annas of the zemindari, for enhancement of the rent of the taluk; and the defence set up to that suit by the ancestors of the present defendants was that the mouzahs had been granted to them in permanent mokurari, and that the rent was not liable to be enhanced. The suit was brought in the zillah Court, and a decree was made in favour of the plaintiffs, deciding that the rent was liable to be enhanced, and that if the defendants did not pay the rent demanded, the mehals in dispute should be measured according to the hastbud jarib stated by the plaintiffs, and

the jumma be assessed thereon. An appeal from this decree to the Civil Appellate Court was dismissed on the 11th May 1824. In that state of things the deed of compromise was made in August 1825. It was addressed to Joygobind Mozumdar, the ancestor of the defendants, and was executed by Rani Bhubanmoyi; it states that the defendants were paying the annual istimrari rent of Rs. 399 odd, with progressive increase added; that, on appeal to the Court of the zillah, and the Provincial Court at Jehangirnuggur, a decree was passed for measurement and ascertainment of gross rents, and that for amicably settling with the defendants for an increase in the rent, the rent was fixed at sicca Rs. 600 including the old rent. The balance payable by the defendants after certain named deductions on account of their share was fixed in perpetuity. The defendants also presented a petition to the Court, saying that they assented to that compromise.

4. Nothing more appears to have taken place, except that the rent was regularly paid according to the compromise, until about 1854, and then a suit was again brought for enhancement of rent. That passed through various stages of appeal until it reached the Sudder Court. In the judgment of two of the Judges of the Sudder Court (three being present) it is stated that Rani Bhubanmoyi executed a deed of compromise, and from that time up to the period of the adopted son Harendra Narain Roy attaining his majority, the rent was collected according to the deed of compromise, and after that time until the institution of that suit in 1853. They then say: "Under these circumstances we are of opinion that the Rajah is bound by the act of his mother done in 1232 as his guardian, and acquiesced in by him since he reached his majority, unless he can show that it was done in contravention of her duty to him as his guardian: in other words until he can show with reference to the circumstances under which, and to the then capabilities of the tenure regarding which, the compromise was made, that such, compromise was clearly and unmistakably to his detriment." There is a clear finding by the Sudder Court upon the question whether Rani Bhubanmoyi was acting as guardian when she signed this deed of compromise that she was so acting. It must therefore now be taken that she did it as guardian.

5. The circumstances existing at the time of the compromise must next be considered. The parties were litigating not merely as to whether the rent was of the proper amount, or ought to be enhanced, but the defendants were contending that they had a perpetual tenure at a then fixed rent, and this was a settlement which was to put an end to the litigation, and which would also prevent the expense and delay, and the uncertainty of the result which was dependent upon the investigation that the Court had ordered to decide what the amount of rent, if it were to be enhanced, should be. Apparently it is a compromise which it cannot be said would not be beneficial to the infant, the adopted son, but is one which might fairly and naturally be come to as putting an end to the litigation and deciding once for all the matter which was in dispute between the parties; because it must not be forgotten that although there had been a decree affirmed on appeal that the rent was liable to be enhanced, that was subject to a further appeal, and the case might have been carried further by the defendants if this compromise had not

been entered into.

6. The first Court before which the present suit came held that the compromise was binding and dismissed the suit. It then went by appeal to the District Judge, who reversed that decree and held that the compromise was not binding; it then came before the High Court by what is called a second appeal, or an appeal from an appellate decree, and as the High Court in its judgment states what the judgment of the District Judge was it will be convenient to refer to the judgment of the High Court. They say, "We are of opinion that although the dismissal of the suit of Harendra Narain Roy, under Section 1, Act XXIX of 1841" (meaning the dismissal of the suit which was brought in 1854, and which was finally dismissed, after being remanded to the lower Courts for further hearing, on account of the non-appearance of both of the parties) " did not preclude a fresh suit, still if any such suit be brought, the parties would be bound by the decision of the Sudder Dewani Adawlut so far as it decided any material issue. The District Judge in this case is in error in re-opening that question. We must therefore take it that the raffanama (deed of compromise) was executed by Rani Bhubanmoyi as the guardian of Harendra Narain Roy. We find also that the same rent fixed by the raffanama has been received by successive owners of the zemindari for about 57 years. We further find that since the last suit for enhancement was dismissed in 1858, no attempt was made to repudiate the raffanama till 1882," Then they speak of the principle laid down in the case of Hunooman Pershad Pandey v. Munraj Koonweree 6 Moore''s I.A. 393; and go on to say that the District Judge upon the question whether the compromise was beneficial or not to the adopted son "refers only to the decree of 1851 passed in favour of the owner of the 4-annas share of the zemindari. But that decree which was passed in 1851 has no bearing upon the question whether the raffanama executed in the year 1825 was clearly and unmistakably to the detriment of Harendra Narain Roy." Now the decree in 1851 was obtained by the Government, after there had been a purchase at a sale for arrears of revenue not paid by the owner of the 4-annas share, and the District Judge appears to have been in error in treating that as a decree passed in favour of the owner of the 4-annas share. The Government was in a different position from that in which the owner of the 4-annas share would be, and there is no evidence in the case upon which the District Judge could found his judgment reversing the decree of the first Court, and deciding that this compromise was not beneficial to the adopted son, an infant at the time it was made. When the judgments come to be looked at, it appears that he has reversed the decree of the first Court in the absence of any evidence- certainly in the absence of any evidence upon which he might reasonably come to the conclusion that the deed of compromise was not for the benefit of the adopted son. This appears to be a case in which under the provision of the law that there is a second appeal where there has been a substantial error or defect in the procedure of the lower Court, the High Court was right in reversing the decree of the District Judge and leaving, as it did, the decree of the first Court-which held that the deed of compromise was a binding one, and therefore the suit for the enhancement of rent ought to be dismissed-to stand.

7. Their Lordships will therefore humbly advise Her Majesty to dismiss this appeal, and to affirm the decree of the High Court. The appellant will pay the costs.