
(1874) 06 PRI CK 0003

Privy Council

Case No: None

Meer Mahomed
Hossein

APPELLANT

Vs

A. J. Forbes

RESPONDENT

Date of Decision: June 24, 1874

Citation: (1874) 2 IndApp 1

Hon'ble Judges: James W. Colville, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Barnes Peacock, J.

1. The Appellant, the Defendant in the suit, represents the grantees of a talook under a sunnud which was made in 1775 of certain lands, the rent reserved at that time being Sanwat Azeemabadee rupees 2599. The Plaintiff represents a person who purchased the zemindary in which the talook was situate at an auction sale; and he, as representative of the zemindar, claimed in the first instance to enhance the rent to the present value of the lands. He sought to raise the rent of 2599 Azeemabadee rupees to 8465. 2. 0.

Company"s rupees. The High Court held that under Act X. of 1859 he was not entitled to enhance. Act X. of 1859, Section 15, says : "No dependent talookdar, or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryots, who in the provinces of Bengal, Behar, Orissa, and Benares holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section 51, Regulation VIII., 1793, or in any other law to the contrary notwithstanding." They found that from the time of the permanent settlement down to the time when Sicca rupees were converted into Company"s rupees in 1835, the Defendant and his predecessor had paid 2107 Sicca rapees, in lieu of 2599 Azeemabadee rupees. That rent could not be changed now even if it could be shewn that the calculation under which the 2599 Azeemabadee rupees were converted into 2107 Sicca rupees was erroneous. It would be impossible now to go back to the grant of 1775 and to say that the 2107 Sicca rupees, which has been the rent paid from the time of the

permanent settlement, is now to be changed because it originated out of a grant by which 2599 Sanwat Azeemabadee rupees were reserved. The High Court held that this was not an enhancement of the rent, but merely a valuation of the old rent of 2599 Azeemabadee rupees, and therefore they allowed the Azeemabadee rupees to be converted into Company"s rupees according to a fresh calculation.

2. The Judge found that there had been no change except the conversion. He says, "Both parties having been called upon to adduce evidence on these points," those were the two issues which the High Court had sent down to be tried, "the Appellants have filed dakillas, or receipts, from 1241 M. Section to 1264 M. S., with the exception of 1262 M.S., and which have been attested by Moonshee Jowahir AM on their behalf. Those documents shew how much they paid in each year, and to a certain extent prove that the jummak has not been changed during those years." The receipts shew that the jummah was paid in Company"s rupees, and therefore to alter the amount of Company"s rupees now you must go back beyond the permanent settlement to shew that these Company"s rupees, which have been paid for more than the last twenty years, won; too small an amount as compared with the 2599 Azeemabadee, rupees reserved in 1775. He says, "Attested copy of an urzee of Baijnath Sing has also been filed in reply to a per-wannah issued by the collector. He was surburaker of the property from 1.243 to 1252 M. Section This paper shews that in May, 1828, or 1236 M.S., the rent of the istemrar was 2107 Sicca rupees." lie says that this document shews that at that time, viz., May, 1828, the rent was 2107 Sicca rupees. "From the copy of the sunnud filed in former suits the rent was fixed at 2599 Sanwat rupees; 8, 2 1/2 Sanwat Azeemabadee rupees. The document above mentioned shews that the rent has been changed into 2107 Sicca rupees, 9, 10 1/2 Sicca rupees; and again, according to the batta, allowed in Sicca rupees at the rate of Rs. 6. 10a. 8p. per cent., changed to the equivalent in Company"s rupees of Rs. 2248. 1a. 8p. Beyond this equivalent in the rupees current at different eras, no change can be discovered of the rent of the istemrar having ever been really changed since the grant of the sunnud in A.D. 1795. The Respondent, Mr. A.J. Forbes, has submitted no evidence of any kind to shew the contrary, or to rebut the presumption that the land has been held at that rent from the time of the permanent settlement." He then goes on, and in a note at the foot of his judgment he says : "With reference to the second issue, namely, the difference, if any, between the Sanwat Azeemabadee rupees and the Company"s rupees, the claim for the excess having been dismissed, there is no necessity to go into the matter. Regulation XXXV of 1793, Section 14, which gives the different rupees current at the time, clearly lays down that 96 old Patna Sanwats are equivalent to 100 Sicca rupees of the 19th Sun, and to reduce Sicca rupees into Company"s, the sum of Rs. 6. 10a. 8p. per cent, is allowed, i.e. Rs. 106. 10a. 8p. Company"s rupees equal to 100 Sicca rupees." Then he says, "See Mutter"s Tables." Now the regulation to which the learned Judge refers is Regulation XXXV. of 1793. It recites that it was necessary that there should be no other coin in circulation or in use except the Sicca rupee of the 19th Sun, and they state the mode in which that was to be brought about. Having stated that Sicca rupees only should be received at the Treasury in payment of revenue, that they should be

received in payment for salt, they prohibited parties from making contracts after a certain date in any other coin than the Sicca rupee, stating that if they entered into any such contract for any sum of money excepting Sicca rupees the contract should not be enforceable in a Court of Law. Then they say, " by the operation of these rules the various sorts of old and light rupees must in a course of time fall to their intrinsic worth compared with the Sicca of the 19th Sun, as they will produce no more in the mint, and to which they will necessarily be brought to be converted into Siccas, as they will be nowhere passable or in demand as coin from being nowhere a measure of value." Then after this regulation it appears that the 2599 rupees were, by arrangement between the parties, the one who was bound to pay the rent and the other who was entitled to receive it, converted into 2107 Sicca rupees. That was before the permanent settlement. The permanent settlement in this district was made in 1802. That is stated in the Respondent's case. The rent having been converted into Sicca rupees before the permanent settlement in 1802,--the permanent settle-merit was made with the Plaintiffs predecessor,--and the Government in fixing the amount of revenue which was to be paid under the permanent settlement looked to the assets of the estate, and they must have taken the assets of this estate as 2107 Sicca rupees, and estimated the revenue which the zemindar would have to pay accordingly. The permanent settlement was fixed upon the basis that the rent which was payable under the pottah was 2107 Sicca rupees, and from the time of the permanent settlement that is proved to have been the only amount paid in discharge of rent up to the time when the Sicca rupee was abolished. That rupee was abolished by Act XIII of 1836. By Section 1 it was enacted that "from the 1st of January, 1838, the Calcutta Sicca rupee shall cease to be a legal tender in discharge of any debt, but shall be received by the collector of land revenue, and at all other public treasuries, by weight, and subject to a charge of 1 per cent, for recoinage." Then it states that the new coin, which is called the Company's rupee, should be taken at the rate of 16 new or Company's rupees for every 15 Calcutta Sicca rupees of due weight, that is to say, the Company's rupee was equal to 12/16ths of a Sicca rupee.

3. From that time, then, the Defendant could not continue to pay his rent in Sicca rupees, because the Sicca rupees had been abolished, and it had been enacted that no tender should be made in Sicca rupees. It was therefore necessary to convert the 2107 Sicca rupees into Company's rupees, and that was done by adding the difference between the Company's rupees and the Sicca rupees, and from that time the 2107 Sicca rupees which had been paid from the time of the permanent settlement were converted into 2248 Company's rupees, which were paid from that time down to the time of the commencement of this suit.

4. It appears to their Lordships that if any question as to the value of the Azeemabadee rupees could have been entered into at all in the present suit, the conduct of the parties in dealing with the 2599 Azeomabadee rupees for upwards of fifty years as being the equivalent of 2107 Sicca rupees would have been much stronger evidence than any evidence which is given in this case by Mr. Palmer from the old almanac, or by Mr. Judah

from Prinsep's tables, in which he stated that there was no actual valuation of the Sanwat Azeemabadee rupee. "He states the information will be found in Prinsep's tables, in which he also admits some errors are to be found; at the same time he states that those tables do not give the equivalent of Sanwat Azeemabadee in Company's rupees," they only give it in Siccas.

5. Now the Judge upon that evidence, finding that from the time of the permanent settlement down to 1836, 2107 Sicca rupees were the only rent which had been paid, and that from 1836 these Sicca rupees had been converted into 2248 Company's rupees, held that the Plaintiff was not entitled to recover from the Defendant at a higher rate than that which had been paid from 1835 to the time of the commencement of the suit as the equivalent of 2107 Sicca rupees, and dismissed the Plaintiff's suit. The High Court, however, thought that the Plaintiff was entitled, at this distance of time--notwithstanding the mode in which the parties had dealt with it, notwithstanding the fact that no Azeemabadee rupees had ever been paid as rent from the time of the permanent settlement down to the time of the commencement of the suit--to recover at the rate of 2599 Sanwat Azeemabadee rupees, to be converted into Company's rupees; and according to the evidence which has been given in the cause, they converted the 2599 Sanwat Azeemabadee into Company's rupees at a higher rate than 2248. The case was before the High Court upon special appeal, and therefore in strictness they had nothing to do with the evidence in the cause. There was no evidence upon which (even if they could have been allowed to do so by law) they could find that 2599 Sanwat Azeemabadee rupees were of a higher value than the 2248 Company's rupees into which they had been converted; but even if they had the power of doing that, and had done so, the parties had agreed from a period antecedent to the permanent settlement that the 2599 Sanwat Azeemabadee rupees should be converted into a different coinage, namely, the Sicca rupee at the rate which had been paid down to 1836, and which in 1836 had been converted into the statutable equivalent in Company's rupees.

6. Under these circumstances their Lordships think that the High Court was wrong in overruling the decision of the Judge who tried the issues, and they will therefore humbly recommend Her Majesty that the decision of the High Court should be reversed, that the decision of the Judge of the lower Court should be affirmed, with the costs of this appeal and the costs in the High Court.