(1863) 02 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 1914 of 1861

Maharani Indrajit Koonwari	APPELLANT
Vs	
Chokowari Sahu	RESPONDENT

Date of Decision: Feb. 19, 1863

Judgement

Sir Barnes Peacock, Kt. C.J.

1. In this case the plaintiff sued to resume a lakhiraj tenure, u/s 28, Act X of 1859. Such a suit cannot be maintained upon the ground that the tenant holds under an invalid tenure, but can only be maintained upon the ground that be holds under a tenure invalid for the reason mentioned in section 10, Regulation XIX of 1793,--viz., that the grant under which he holds was made since 1st December 1790. To obtain relief u/s 28 of Act X of 1859, the plaintiff must prove that the tenant holds under such a grant. In this case the Collector found that he held under a grant purporting to have been made prior to 1790, but that the alleged grant was not genuine, and he gave a decree for resumption in favor of the plaintiff. The Judge on appeal stated in his judgment that there were strong grounds for believing that the alleged grant was valid; and that as the plaintiff had failed to prove that the defendant held under an invalid tenure, the decree of the lower Court was wrong, and he reversed the order of the Collector with costs payable by the respondent. The Judge was wrong in stating that the plaintiff was bound to prove that the defendant held under an invalid tenure, but he ought to have stated that the plaintiff was bound to prove that the defendant held under a tenure which was invalid upon the ground that it was granted since let December 1790, and that having failed to do so the Collector ought to have decreed in favor of the defendant, leaving the plaintiff to proceed by a regular suit for resumption.

2. It is now contended before us, on behalf of the respondent, that the decree of the Judge was right, and that the decision of the Judge could not be binding as to the validity of the sunnud in a regular suit for resumption instituted in the ordinary Civil Court. But we think that the Judge has substantially found in his judgment that the

plaintiff has failed to show that the defendant held under a grant made subsequent to 1790, because he held under a grant made prior to that date, and that grant was valid.

3. If the judgment and decree be allowed to stand, a Court of ordinary civil judicature would, probably, consider itself bound by the Judge''s decision as to the validity of the grant. Looking at sections 372 and 373, Act VIII of 1859, we think that the plaintiff has a right to appeal specially against the decision of the lower Court, if the decree, as explained by the judgment, is erroneous; for by section 372 it is enacted that a special appeal shall lie from all decisions passed in regular appeals by the subordinate Courts, and not merely from all decrees. Section 373 says, that the application for appeal shall be accompanied by copies of the judgment and decree of the lower Court; and section 376, which speaks of reviews of judgments, uses the words "decree" and "judgment" in such a manner as to lead one to think that by the word "decision" the Legislature meant the "decree and judgment" taken together, and not simply the decree unexplained by the judgment.

4. For the above reason, we think that the appeal ought to be decreed with costs; that we ought to give the same decree as the Judge ought to have done, viz., to reverse the decision of the Collector with costs, upon the ground that the plaintiff failed to prove that the defendant held under a grant made since December 1790, and consequently failed to prove that the case was one in which jurisdiction was conferred on him by section 20, Act X of 1859, leaving the plaintiff to file a regular suit u/s 30, Regulation II of 1819, in which the validity of the grant set up by the defendant would be investigated and determined. The appeal is decreed without costs, and the decree of the Collector reversed. The costs of both of the lower Courts to be paid by the plaintiff, the present appellant.