(1869) 04 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 2973 of 1868

Shaw Khairuddin Ahmed and Others		APPELLANT
	Vs	
Sheikh Abdul Baki		RESPONDENT

Date of Decision: April 30, 1869

Final Decision: Dismissed

Judgement

Glover, J.

This was a suit for enhancement of rent after notice. Both plaintiff and defendant are co-sharers in the same village. In 1848 a batwara was effected by which the defendant''s dwelling-house was included in the plaintiffs'' share of the village, and the Collector, under the provisions of section 9, Regulation XIX of 1814, directed that this, together with seven bigas of adjacent land, should be retained by the defendant on his paying the plaintiff a yearly rent of three rupees a biga, and this arrangement was duly entered in the batwara papers. The plaintiffs now seek to enhance this rate of three rupees a biga up to rupees 6 the usual rate, on this ground amongst others, that the Regulation only refers to land immediately adjacent to a house, and not to large fields, which are moreover cultivated by the defendant as a ryot. The Assistant Collector thought that the plaintiff was entitled to enhance, but gave no decree, holding that the Revenue Courts had no jurisdiction. The Judge, on appeal, thought that the case was cognizable by the Collector, but that the rate, fixed by the Collector on the batwara proceedings, was conclusive so far as the Revenue Courts were concerned. The point taken in special appeal is that the batwara proceeding is no bar to enhancement; that the lands then given by the Collector, did not come under the definition of section 9 of the batwara law; and that if they did, the utmost the Collector did and could do, was to fix what was then an equitable rent, and that it did not follow that what was equitable then, was equitable now. For the special respondent it was contended that the Revenue Courts had no jurisdiction, as had been found by both the lower Courts, and that there was no need to go into the question as to whether the batwara order was a final one or no.

It appears to me that this is a valid objection, so far as regards the want of jurisdiction. I do not, however, understand the Additional Judge to decide the case on this ground; for in one part of his decision, he says "the claim is entirely for ground, rent, and therefore within the cognizance of the Collector." I take his meaning to be that, although the Collector had jurisdiction, still the batwara proceeding must be assumed to have been correct and to be a sort of bar to the plaintiffs'' claim to enhance. I admit, however, that there are some parts of his judgment, which seem to mean that, as the land in suit was immediately attached to the defendant''s house, the rent fixed by the Collector, u/s 9, Regulation XIX of 1814, was in the nature of house-rent, and not recoverable under Act X of 1859. But whatever his real meaning may be, I take it that there is no jurisdiction in the Revenue Courts to try a case like this. There can be no doubt (indeed the batwara papers show this very clearly) that the Collector gave the seven bigas of land to the defendant as an appanage to his dwelling-house, which appears to have comprised a considerable block of buildings, including a mosque. Whether or not the grant was excessive for the purpose, is a question with which we have nothing to do now. It is enough that the Collector was authorized, under the batwara law, to give such land as he thought proper to consider "attached" to the defendant''s homestead as an appurtenance to that homestead, and it seems to me therefore, that the rent fixed on that land must be considered as the rent of the homestead of the house and grounds, as it would be called in England, and that such rent could not be the subject of a suit under Act X of 1859; the proper forum would be the Civil Court. For these reasons I think that this special appeal should be dismissed with costs.

Kemp, J.

I concur in this judgment. It appears to me that the land is immediately attached to the house of the defendant, special respondent, "forming, as it were, one compound or set of premises." Bipro Dass Dey v. William Wollen 1 W.R. 223. The suit ought to have been brought in the Civil Court.

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[1]Reg. XIX of 1814, section 9. If a dwelling-house, belonging to one sharer, shall be situated in a mehal or village, which may be included in the state of another, the proprietor of such house shall be at liberty to retain it, with the offices, buildings, and ground immediately attached to it, upon paying to the proprietor of the mehal or village an equitable rent for the ground; and the limits of the ground and the rent to be paid for it shall be particularised in the paper of partition.