(1943) 08 CAL CK 0001

Calcutta High Court

Case No: Appeal from Appellate Decree No. 1242 of 1940

Rathindra Narayan Das		APPELLANT
	Vs	
Rai Gunendra Krishna Roy Bahadur		RESPONDENT

Date of Decision: Aug. 26, 1943

Final Decision: Allowed

Judgement

Biswas, J.

This is an appeal in a suit for assessment of rent in respect of a piece of bhiti land within the municipal limits of the town of Dacca. The claim was at the rate of Rs. 3 per annum, and the plaint included a prayer for recovery of three years'' arrears at this rate. There were two Defendants in the suit having a common interest, but it was contested by Defendant No. 1 alone. The learned Munsif who tried the suit dismissed it, but on appeal the learned Subordinate Judge reversed the decision, and assessed the rent at 8 annas per year, disallowing the claim for arrears. Hence this second appeal by Defendant No. 1. There is no controversy now as to the Plaintiff''s title to the disputed land. Both Courts have concurrently found that the land is not only within the geographical limits of the Plaintiff''s estate, but also appertains to it as part of its mal assets. Both parties accept this finding, as they must, but it does not necessarily give the Plaintiff a right to recover rent from the Defendants. That must depend on whether the Plaintiff is further able to show that the parties stand to each other in the relation of landlord and tenant. The onus of proof in this matter, it is conceded, lies on the Plaintiff, but once this is established, it will be for the Defendants to resist the claim, if they can, by proof of a rent-free title. [Jagdeo Narain Singh v. Baldeo Singh L. R. 49 I. A. 399 : S. C. 27 C. W. N. 925 (1922)].

2. The first and main question, therefore, which arises in the case is whether or not the relationship of landlord and tenant has been established. The Courts below took divergent views on the point; the learned Munsif held against the Plaintiff, while the learned Subordinate Judge decided the other way. The difficulty is that there is no

direct evidence of letting from which a contract of tenancy may be deduced: a finding of tenancy, if any, must be a matter of inference or presumption.

3. The Plaintiff contends that there are materials from which such an inference or presumption may be drawn, and the most important of these is said to be the record-of-rights in respect of the disputed land, which was finally published in the year 1916. Reliance is also placed on alleged admissions of tenancy in the written statement, and on certain butwara proceedings among the proprietors of the parent estate.

4. These last two items may be disposed of at once. The written statement contains a clear denial of the relationship of landlord and tenant, and then in the alternative, sets up a plea of rent-free title which doubtless involves the assumption of a tenancy under the Plaintiff. It is difficult to see how in the face of the positive denial this alternative plea can be treated as an admission of tenancy. As regards the butwara proceedings, all that appears is that the Partition Deputy Collector included the disputed holding in the computation of assets, but this would not necessarily show that the Defendants were in possession as tenants, whether rent-paying or rent-free.

5. The record-of-rights is undoubtedly of greater significance. The disputed land is recorded therein as appertaining to the Plaintiff''s revenue-paying estate, and the Defendants'' predecessor-in-interest is shown as " dakhalkar," with a note in the column for rent to the effect: "assessable to rent, but no rent paid or received." What is the effect of these entries?

6. The word "dakhalkar" by itself, as meaning only an occupier, may perhaps be regarded as inconclusive, but it does not necessarily exclude the idea of a tenancy. It may well be that this word was used because admittedly the land was bhiti, that is to say, non-agricultural in character, with a pucca building on it which was used as shop-rooms, and strictly speaking, a tenant of such land could not be recorded as a "tenant" under the Bengal Tenancy Act, not being one who could be brought within any of the specific categories mentioned in sec. 4.

7. Be that as it may, the other entry, "assessable to rent," though not paying rent, seems to my mind definitely to point to a tenancy. I cannot accept Mr. Chakravartti''s explanation that the entry merely declares the liability of the land to pay rent, and not the liability of the " dakhalkar " to pay the same. The entry has to be read with other parts of the record, and so read, there can be no doubt that the tenancy implied is one between the person recorded as owner and the person recorded as in possession of the land. That an inference of tenancy may be properly drawn from such an entry is clear from the decision in Kanta Mohan Mallik v. Makhan Santra 39 C. W. N. 277 (1934). That was a suit for assessment of rent on land which the Defendant claimed as nishkar, and Mitter, J., held that though the initial burden of proof in such a case lay on the Plaintiff, the burden was nevertheless

shifted where the land was entered in the record-of-rights as not paying rent, but liable to be assessed with rent. In other words, the decision was that in such a case the record-of-rights would be presumptive evidence of the relationship of landlord and tenant.

8. I must hold accordingly that in the present case also the record-of-rights as it stands is sufficient to raise a similar presumption in favour of the Plaintiff.

9. This makes it necessary to consider the further contention raised on behalf of the Appellant impugning the validity of the record-of-rights itself. The argument is that as the land in dispute was non-agricultural land, no record-of-rights could be lawfully prepared in respect of it under Chapter X of the Bengal Tenancy Act: the entries relied on by the Plaintiff were consequently inadmissible in evidence, and at any rate incapable of raising any presumption under sec. 103B.

10. As the record-of-rights here was finally published in the year 1916, the matter will have to be considered with reference to the law as it then stood. It is not and cannot be disputed that as the result of certain amendments made in the year 1928, a record-of-rights may now include both agricultural and non-agricultural lands. By the amending Act of that year, sec. 101 (1) in Chapter X was amended, in the first place, by substituting the words "all lands" for the words "the lands," and then a proviso was added in these terms:

Provided that the provisions of sections 101 to 105 A (inclusive), 109C, 109D, 110, 112 and 113 shall not apply in respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture.

11. A new proviso was also inserted at the end of sec. 102 regarding the particulars to be recorded in respect of lands not used for purposes connected with agriculture or horticulture. There can be no doubt that these provisions clearly contemplate the preparation of a record-of-rights in respect of non-agricultural lands.

12. It is argued, however, that this was not the law before 1928. No direct authority is cited in support of this contention, but reliance is placed on certain decisions which, it is contended, hold that non-agricultural lands are wholly outside the scope of the Bengal Tenancy Act, and inferentially, therefore, are supposed to show that such lands are also excluded from the operation of Chapter X. The cases cited are Raniganj Coal Association, Limited v. Judoonath Ghose I. L. R. 19 Cal. 489 (1892), Umrao Bibi v. Mahomed Rojabi I. L. R. 27 Cal. 205: S. C. 4 C. W. N. 76 (1899) and Biprodas Pal Chowdhury v. Asam Ostagar I. L. R. 46 Cal. 441 (1918).

13. These decisions, in my opinion, are of but little assistance to the Appellant. In none of them is it held, or was it necessary to hold, that none of the provisions of the Bengal Tenancy Act applied to non-agricultural lands. Certain provisions will doubtless not apply, and that is all that is decided in these cases. In Raniganj Coal

Association''s case I. L. R. 19 Cal. 489 (1892), the larger question whether the Bengal Tenancy Act included lands other than those let for agricultural or horticultural purposes was expressly left open. It will be seen that the Bengal Tenancy Act contains no definition of "land." The Bengal Rent Commission had pointed out in their report that certain parts of the old Rent Acts (Act X of 1859 and Bengal Act VIII of 1869) had been construed to apply only to land used for agricultural or horticultural purposes or the like, and that the question whether the remaining portions of the Acts were equally limited in their -application had not been settled. They accordingly framed a definition of "land" with a view to make the point clear, but the definition was not incorporated in the Bill as passed. It seems to me, therefore, that the question whether the word "land" occurring in any part of the Bengal Tenancy Act should be limited only to agricultural or horticultural lands must depend on the subject or context, and the decisions cited on behalf of the Appellant must in my opinion be read in this light. They afford no warrant for the view that land not used for agricultural or horticultural purposes is excluded from the purview of the Act for all purposes.

14. I do not think there is any thing in Chapter X, even as it stood before 1928, which went to show that the jurisdiction of a Revenue Officer to prepare a record-of-rights was limited only to lands used for agricultural or horticultural purposes. On the other hand, the words " in any local area, estate or tenure, or part thereof " after the words " the lands" occurring in sec. 101 (1) would seem to militate against any such restricted interpretation: It may be that the words " the lands " were altered in 1928 to "all lands," but this was only meant to remove an ambiguity, and not to alter the law.

15. In Raja Sasi Kanta Acharjya Bahadur v. Sandhya Moni Dasya 26 C. W. N. 483 (1921), Sanderson, C. J., sitting with Chotzner, J., refused to accept the argument that the presumption of correctness under sec. 103B would not apply to entries in respect of chandina lands because such lands were not subject to the provisions of the Act. The learned Judges no doubt added that the presumption could not be as weighty as would be the case if the entries were with regard to matters which could be rightly and properly included in the record-of-rights, but this could not weaken the effect of the decision which clearly implied that a record-of-rights could be validly prepared in respect of non-agricultural as well as agricultural lands. I have not been referred to any authority in which the correctness of this view has been questioned or even doubted. On the other hand, there are at least two reported decisions in which this case has been followed: Chand Mia Munshi v. Tukamia 28 C. W. N. 516 (1923) and Fazlar Rahaman Biswas v. Golam Kader Mia 30 C. W. N. 689 (1926).

16. I must consequently overrule Mr. Chakravartti''s contention as regards the validity of the disputed entries in the record-of-rights, and hold that the entries were admissible in evidence and did attract the statutory presumption under sec. 103B.

17. The Plaintiff must accordingly be held to have established the relationship of landlord and tenant between the parties, and a presumptive claim to rent from the Defendants in respect of the disputed lands.

18. This then raises the question whether the Defendants can claim to have made out their plea of rent-free title. As already pointed out, in the circumstances of the case the burden of proof in this respect lies wholly on them. The admitted facts on which the Defendants can rely for the purpose are that they and their predecessors have been in possession of the lands for a period of 80 to 85 years, and that during this period there has been neither any payment of rent by them, nor any demand of rent from them by any one. It is also admitted that there is a pucca building on the land which has stood there for years,-there being no evidence when or by whom it had been constructed,-and from which they have all along realised the rents and profits. There is no evidence that the Defendants held possession under assertion of a rent-free title, except that during the settlement proceedings they set up a claim of nishkar, which, however, was negatived by the Revenue Officer. The question is whether on these facts an inference of a rent-free title can be drawn which would be sufficient to rebut the presumption of the record-of-rights as to liability to pay rent. Following, among others, the cases of Jafar Ahmed v. Birendra Kisore 22 C. L. J. 128 (1913), Birendra Kisore v. Chandi Charan 22 C. L. J. 134 (1913) and Kanta Mohan Mallik v. Makhan Santra 39 C. W. N. 277 (1934), (already cited), I think I must answer the question in favour of the Defendants. Mr. Sen on behalf of the Respondent did not in fact seriously contend that if the relationship of landlord and tenant was found to have been made out, the facts of the case were not sufficient to raise a presumption of rent-free title or of a lost grant which would outweigh the presumption arising from the entry in the record-of-rights. I am unable to accept the view of the learned Subordinate Judge that no presumption of rent-free title can be allowed unless the Defendants can show that they asserted such title more than 12 years before the commencement of the suit.

19. The result is that this appeal is allowed, the judgment and decree of the learned Subordinate Judge are set aside, and those of the learned Munsif restored. The Appellants are entitled to costs both in this Court and in the Court of Appeal below. Leave to appeal under clause 15 of the Letters Patent is refused.