Sheikh Jaki Mamood Vs Dino Bandhu Bhattachrajee and Others

Court: Calcutta High Court

Date of Decision: May 28, 1909

Judgement

1. This appeal arises out of a suit for rent in kind. The defence of the tenant was that the plot for which the rent was claimed lay within another

holding which he hold at a money rent, and that the plaintiffs were not entitled to separate rent in kind for this plot. The lower appellate Court found

that this plot was not included in the defendant"s nagdi holding, and accordingly gave a decree to the plaintiffs for the value of the rent in kind. The

defendant appeals to this Court.

2. The first point taken on behalf of the appellant is that the learned Subordinate Judge erred in admitting in evidence certain butwara papers. The

learned pleader for the appellant relies on the cases of Drobo Moyee Gosmanee. v. Dhurmo Doss Koondoo 10 W.R. 197 and Gopal Chunder

Shalia v. Madhub Chunder Shaha 21 W.R. 29. In the first of those oases, however, it is not stated what the papers were which the Court held to

be inadmissible in evidence, and in the second case the papers excluded were chittas. The law governing partitions has been much changed since

those cases. The Deputy Collector has now to prepare a record of existing rents in which he has to enter, among other details, the rent as stated by

the tenant. He has also to go to the village, after giving due notice, and then read out the entries in the record in the presence of such of the

interested persons as are present. After all these proceedings have been completed the Deputy Collector determines the partition and prepares the

paper of partition which specifies the lands included in each separate share. The papers which have been produced in this case appear to be, first,

the paper of partition prepared u/s 57 which was given to the plaintiffs when their share was divided off. This contains a list of the plots which fell

to their share. Another paper which has been filed appears to be the field-book or chitta which describes the various plots. Now it may well be

that such chitta would be no evidence against a tenant who was not a party to the partition, if it stood entirely by itself. But the partition paper

prepared u/s 57 is, we think, admissible in evidence u/s 13 of the Evidence Act as a record of a transaction in which the right to certain plots is

recognised. Of course we do not say it would be very valuable evidence against a tenant who was not a party to it, but that it would be admissible

in evidence seems to us perfectly clear. In the same way the chitta, which perhaps by itself would be inadmissible in evidence, might be admitted

u/s 9 of the Act, as explanatory of the partition paper, which without the chitta might be very difficult to understand.

3. We think, therefore, that these papers were admissible in evidence in this case and the first contention of the appellant, therefore, fails.

4. With regard to the other contention of the appellant, we find it very difficult to say on what precise point of law the lower appellate Court is said

to have erred. It has first been argued that the decree in the former rent suit has been misconstrued. It is argued that the Subordinate Judge is

wrong in thinking that that decree decided that the land now in suit was not included within the nagdi holding of the defendant, the rent of which

was then in suit. But it seems perfectly clear that whatever was decided in that suit the plaintiff did not, as a matter of fact, sue for the rent of this

land in that suit. The lands of which the rent was then sued for wore entered by their numbers in the butwara proceeding''s and in those numbers is

not included the number of the plot now in suit. The learned Subordinate Judge has gone through the whole of this evidence including the pleadings

in the former suit, the butwara papers to which we have referred and certain chitta of 1310 prepared by the plaintiffs. It is argued that he has

misconstrued the effect of certain statements made by the defendant in the former proceedings, both in his written statement and in his deposition.

But unless we went through the whole evidence in the case, which we are not entitled to do in second appeal, we should find it impossible to

decide whether the Subordinate Judge has rightly apprehended the effect of all this evidence or not. On going through the evidence he has come to

the decision that the plot now in suit is not included in the defendant''s nagdi holding. This is a finding of fact with which we cannot interfere.

5. Finally, it has been argued that the learned Subordinate Judge exercised his discretion wrongly in not directing a local enquiry. It appears,

however, that neither before the Subordinate Judge nor before the Munsif was any application made by the defendant for a local enquiry and it is

impossible for us to hold that the learned Subordinate Judge exercised his discretion wrongly in the matter, when as a matter of fact he was not

asked to exercise it at all.

6. Considering the case as a whole we do not think that any ground has been made for our interference in second appeal. We, therefore, dismiss

the appeal with costs.