
(1869) 06 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 102 of 1869

Saroda Mohan Roy
Chowdhry

APPELLANT

Vs

Ganganarayan Das and
Others

RESPONDENT

Date of Decision: June 8, 1869

Judgement

Macpherson, J.

I think that this case ought to be remanded in order that it may be tried de novo by the Judge, whose present decision is in various respects defective. The plaintiff sues as one of several joint proprietors to recover a certain proportion of rent which he says is payable by the defendants in respect of lands occupied by them. The co-sharers are not parties to the suit. The defendants have throughout pleaded that as the plaintiff holds this property jointly with others the present suit is bad in the absence of the co-sharers. The first Court held that the proprietors were in the habit of making collections separately, and therefore that the suit would lie. The Judge upon this part of the case simply says:-- "There is no doubt about the extent of the plaintiff's interest; and there are several precedents to the effect that a shareholder can sue to enhance the rent, if his share is definitely known and his title is not contested." The law, as laid down by the Judge here, is correct only to a certain extent. If the plaintiff can prove that the defendants have heretofore recognized him as being the proprietor of a particular share of the property, and have paid to him separately a certain proportion of the rent, then no doubt the suit will lie against them, without the other joint proprietors being made parties. But, unless the plaintiff either proves that the defendants have paid their rent to him separately, or proves an express agreement on their part to pay to him separately, the suit will not lie in the absence of the other shareholders. The Judge must consider carefully what the facts are with reference to this part of the case.

2. The next point on which the judgment of the lower appellate Court is defective is as to the reasons for which, in the Court's opinion, the defendants are liable to pay rent at an enhanced rate for the year 1274. The defendants denying their liability to have their rents

enhanced, the judgment should say distinctly on which of the grounds on which enhancement is claimed by the plaintiff the enhancement is decreed. It is not enough for the lower Court to find generally that the plaintiff is entitled to rent at an enhanced rate; there must be a distinct finding as to the ground on which he is so entitled.

3. With reference to the contention of the defendants that they have a right of occupancy, it appears to me that the Judge has quite misconceived the nature of the evidence necessary to be adduced by the defendants in order to prove certain dakhilas and other documents put in by them. The Judge says:-- "I am obliged to concur with the Deputy Collector that the receipts filed are not properly proved by the best evidence, i.e., that of the writers, when alive in all cases." The Judge apparently labors under the impression that, when the writer of a document is alive, the document cannot be proved save by the evidence of that writer; at any rate, that it is the duty of the person who propounds the document to bring the writer before the Court. But there may be many people who can prove a document quite as well as the writer of it; and a person who wishes to put a document in evidence is under no sort of obligation to call the writer as his witness, if he has any other sufficient means of proving what he wants.

4. In the case of a receipt granted to a ryot, whether the writer of the receipt be or be not alive or producible, it would be prima facie quite sufficient if the ryot were to depose that he himself, on paying his rent, had received the receipt from the zamindar's gomasta to whom he paid his rent, and that the gomasta gave it to him, saying that it was a receipt for the rent so paid. So also it would be sufficient if he swore he saw the zamindar or gomasta sign the receipt, or if he were to produce a witness (by which term I do not mean one whose name appears in the document as attesting its execution) who deposed that the receipt was written and signed by the gomasta in his presence. The evidence of the writer of a paper is not necessarily any better evidence than would be that of other persons who can of their own knowledge speak to such facts as will satisfy the Court that the document is really what it purports to be.

5. The lower appellate Court does not seem to have wholly discredited the documents produced by the defendants. On the contrary the Judge says:-- "I do not entirely concur with the Deputy Collector in his "remarks on the dakhilas * * * they are simply not proved." It appears to me therefore that the Court must, in retrying the case, be very careful to see that it does not reject, as being unsupported by evidence, documents which are, in fact, supported by good legal evidence: of the weight to be attached to the evidence before him, the Judge will, of course, form his own opinion.

6. The judgment of the Judge is reversed, and the case is remanded to him, in order that it may be tried and decided anew with reference to the above remarks.

7. The appellants will get their costs of this appeal.

Jackson, J.

I concur in the remarks of Mr. Justice Macpherson, and in remanding the case for a fresh decision.