

(1880) 12 CAL CK 0005

Calcutta High Court

Case No: None

Kali Prosonno Ghose

APPELLANT

Vs

Newaj Bundopadhya

RESPONDENT

Date of Decision: Dec. 10, 1880

Citation: (1881) ILR (Cal) 543

Hon'ble Judges: Richard Garth, C.J; Field, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

I think that this appeal Should be dismissed.

A suit was brought by the zamindar to enhance the rent of certain lands after notice. The defence in respect of one portion of these lands was, that it was lakhiraj; and the defendant called two witnesses to prove that defence.

2. The first Court dismissed the suit upon this ground. It held that, as regards the lands said to be lakhiraj, prima facie case had been made out by the defendant that they were lakhiraj; and that the plaintiff had failed to show that the whole of the lands in suit were rent-paying lands; and as the notice of enhancement was a general one applicable to all the lands in suit, not distinguishing the rent-free from the rent-paying lands the notice was bad even for the rent-paying portion; and therefore he dismissed the suit and declined to go into the question of enhancement at all.

3. The case then came before the Judicial Commissioner on appeal: and he has remanded it to the first Court upon the grounds;-1st, that as it is admitted that the defendant holds some lands in the plaintiff's zemindari, and pays him an entire rent, he was bound, if he wanted to show that a portion of the lands was rent-free, to have given some prima facie proof to that effect, showing what particular lands were rent-free ; and as the Judicial Commissioner considered that the evidence offered by the defendant did not make out a prima facie case that any lands were

lakhiraj, he sent the case back to the Court below to have the question of enhancement tried.

4. Then, secondly, with regard to the notice, the Judicial Commissioner held, that even if the defendant had succeeded in proving a portion of the lands to be lakhiraj, still there was no reason why the first Court should not have tried the question, whether the mal lands were liable to enhancement, and whether the rent ought to be enhanced.

5. It has now been contended before us that the learned Judicial Commissioner was wrong upon both those points.

6. It was argued that, in the case of Huryhur Mookerjee v. Goomanee Kazee (Marshall's Rep., 523; S. C., B. L. R. Sup. 15 it was decided by a Full Bench of this Court, that in all cases where a plaintiff brings a suit for enhancement, the onus is upon him to show that the whole of the lands, the rent of which he seeks to enhance, are rent-paying. But that case does not decide anything of the kind. There a certain part of the land, the rent of which the plaintiff sought to enhance was assumed by the lower Court, to be lakhiraj; and what the Court held was, that the validity or invalidity of the defendant's title to that land could not be tried in that suit. The headnote of that case is rather calculated to mislead.

7. In another Full Bench case Gooroo Persad Roy v. Juggobundoo Mozoomdar (W. R., Sp. No. 15), it was distinctly held by Sir Barnes Peacock and two other Judges that, in a suit for a kabuliat, where the defendant had acknowledged himself to be the plaintiff's ryot as to a portion of the lands in suit, the onus was on him to prove the defence which he set up, viz., that he was not the plaintiff's ryot as to the rest of the land.

7. Sir Barnes Peacock, in delivering judgment says:-"We find that the defendant admitted that, as to a certain portion of the land for the rent of which plaintiff sued, he (defendant) had given a kabuliat, or in other words, had acknowledged that he was plaintiff's ryot. With this prima facie evidence of the fact of defendant being plaintiff's ryot, the burden of proving the special plea raised by the defendant of his not being plaintiff's ryot for the rest of the land, was clearly upon the defendant; otherwise, indeed, every ryot might meet every rent case by a false plea of proprietary title."

8. The same principle appears to have been acted upon in the case of Nehal Chunder Mistree v. Huree Pershad Mundul (8 W. R. 183). Mr. Justice Kemp, who delivered judgment in that case, being one of the Judges who composed the Full Bench in the above case, cited from Marshall's Reports.

9. And in another case, Bebee Ashrufoonissa v. Umung Mohun Deb Roy (5 W. R., Act X Rule, 48), the learned Judges (Seton-Karr and Sumbhoonath Pundit, JJ.) held, that "it could never have been the intention of the Full Bench that a bare allegation of a

defendant of a rent-free holding was to bar the plaintiff's claim. The meaning must have been that there should be some prima facie evidence of an ostensible rent-free title in some portion of the land for which rent is sought."

10. It seems to me that these decisions are quite conclusive upon the point which we have to decide; and if the question were an open one, I should undoubtedly hold that to be the law; because I think it must be unreasonable, where a zemindar sues a tenant for enhancement, who undoubtedly holds and pays rent for lands within his zamindari, that the mere allegation by the tenant that a portion of those lands is rent-free, should throw the onus upon the landlord of proving what particular portion of the land which the tenant holds is rent-paying. The onus ought to be upon the tenant to prove prima facie that some and what part of the land is rent-free; and when he has done so, the onus would then be thrown upon the landlord to rebut such prima facie evidence.

11. Then it is also contended in this case, that the Judicial Commissioner had evidence before him, which he ought to have considered sufficient to establish a prima facie case for the defendant. But it was for him to determine whether that evidence was sufficient or not, and I consider it no part of our duty upon this appeal to go into the question of its sufficiency.

12. Then, with regard to the notice, I am clearly of opinion that the Judicial Commissioner was right. Suppose a suit brought to enhance the rent of 100 bighas of land, and a notice given setting out the grounds of enhancement, surely the notice would not be at altogether bad because the defendant might prove that of those 100 bighas he holds 10 bighas rent-free. The notice would be perfectly good, so for as it was applicable to the remaining 90 bighas.

13. The appeal will, therefore, be dismissed with costs.

Field, J.

14. I also am of opinion that the Judicial Commissioner rightly laid the burden of proving a prima facie case of lakhiraj holding upon the defendant ryot, and I think that it is impossible to say that the evidence of the two witnesses examined amounted to sufficient proof of such a prima facie case.