(1869) 06 CAL CK 0012

Calcutta High Court

Case No: Special Appeal No. 375 of 1869

Madhusudan Bagchi		APPELLANT
	Vs	
Raja Mahes Chandra Sing and Others		RESPONDENT

Date of Decision: June 17, 1869

Judgement

Bayley, J.
In this case the plaintiff sued the defendant for arrears of rent for four-fifths of a certain talook called Baro Ruki Mehal. The plaintiff"s claim was for two months of 1271 (1863) viz., Falgun and Chaitra; for the whole of 1272 (1864-65) and 1273 (1865-66), and up to the 10th Magh 1274 (1867). An intervenor claimed one-fifth of the interest in the mehal as heir of one Rani Bhairabi. It is admitted by all parties that Bani Bhairabi died in 1271 (1863). This intervenor based his right on a Civil Court decree of the 20th May 1868.

2. The first Court gave the plaintiff a decree for three-fifths of the interest of the mehal from 1272 (1864-65).

3. The first Court held that the only point to be decided in the case of the intervener was, whether he was in actual receipt and enjoyment of the rent before the institution of the suit or not. The first Court then remarked that neither of the parties (the plaintiff nor the intervener) could satisfy it upon that point, viz., as to the actual receipt and enjoyment of the rent. The first Court then goes on to ssy, that as the intervenor acquired a right under a Civil Court decree, he had established his claim in this case.

4. On appeal, the Judge in the lower appellate Court has held that the first Court had miscarried in its issues; and he took the title of the plaintiff as Miras Talookdar as the first point to be decided; the title of the intervenor, as the second point for his decision; and the question of damages as the third point.

5. As a matter apparently of title under the decree, the lower appellate Court decides that there is no sufficient proof that the intervenor had received or was entitled to receive any

rents from the defendants, and that the intervener''s claim therefore was improperly admitted by the first Court. The lower appellate Court then going upon the fact that the plaintiff''s right was not denied by the defendants, and that they only pleaded payment to other parties, decreed the rent to the plaintiff for 1272-73-74.

6. From this decision the intervenor appeals specially, and the real issues involved in appeal are these: Firstly, has the intervenor proved his case under the provisions of section 77, Act X of 1859; and Secondly, has the Judge in the lower appellate Court misconstrued the evidence set forth by the intervenor as proof of possession under his Civil Court decree of the 28th May 1868.

7. Now it is clear that the burthen of proof was upon the intervenor to prove the actual receipt and enjoyment of the rents bona fide by him, before and up to the time of the commencement of the suit. He comes in u/s 77, Act X of 1859, and the special words of that section, so far as they are necessary for our decision on the present point at issue, are that the intervenor must prove his receipt of rent "before and up to the time of the commencement of the suit." It has been clearly found as a fact that Bhairabi and the plaintiff were in receipt of the rent up to the year 1271, but no one is stated to have received rent from after that period. It is pressed on us that we are to construe the words "commencement of the suit" to mean the "commencement of the demand." Now the ordinary rule of construction is that when the words to be interpreted are clear, that meaning should be attached to them which the words in their general acceptation bear. In this view I cannot see how the words "commencement of the suit" can mean anything other than what they actually state; and I do not think myself justified in reading the words "commencement of suit" to mean the "commencement of demand." It is urged that if we were to pub so literal a construction upon the words we should be reducing the actual intention of the Legislature to a result which if not absurd, is altogether inconsistent, and a case is put before us where it is said that if there was an agreement to pay rent day by day, and the landlord omitted for the one day before suit to receive rent, he could not be said to be in actual receipt of rents u/s 77 up to commencement of suit. I never heard of such a case, and it is against the custom of the country. Further it will be time enough to decide such a case when it arises. In the meantime we should construe the law, as its unambiguous words indicate in their ordinary meaning.

8. On the second point it is contended that the decree of the Civil Court assigning to the intervenor a one-fifth share under the solenama, and possession being made over to him, it was clear legal evidence of his title to receive rent; and in support of this contention two cases were cited, Khetter Nath Roy v. Durbesh Munshi 9 W.R. 358, Ambika Charan Nag v. Musst. Shibosundari Debi 3 B.L.R. A.C.J. 204-N : 10 W.R. C.R. 320. I do not think that either of those decisions goes further than to declare that, when a decree of the Civil Court awards possession to a party, as the party entitled to the actual receipt and enjoyment of the rents, another party coming in without a title, but receiving rent, should not get a decree under the provisions of section 77, Act X of 1859. Neither of these cases cited meet the present point, for it does not appear that the decree giving the intervenor a

one-fifth share under the terms of the solenama, was for any interest in the talook which forms the subject of the present suit, so as to show that the intervenor was entitled to be considered as the party in actual receipt and enjoyment of the rents of that talook u/s 77. The finding of the lower appellate Court on this point is that "it does not appear, nor is it urged that any thing more was given than the share of the zamindari. No mention is made of this talook, and though the village is named in the decree, and the intervenor got possession of the zamindari property in the village Baro Ruki, yet that does not prove that the intervenor is entitled to demand or receive any rent from the defendants direct." It cannot, I think, be fairly said that a higher class of possession than mere ordinary symbolical possession was given to the intervenor under the decision, when it appears that no such objection as now taken was urged before the lower appellate Court.

9. On the whole, I see no error in law in the decision of the lower appellate Court, and would dismiss this special appeal with costs.

Hobhouse, J.

10. The plaintiff in this case sued for arrears of rent. The special appellant before us intervened under the provisions of section 77, Act X of 1859.

11. The first Court supported the intervenor, and gave the plaintiff a decree for rent less that sum which the Court held to be the intervenor''s share in those rents. The lower appellate Court reversed the decision of the first Court, and dismissed the intervenor''s claim.