
(1871) 11 CAL CK 0001

Calcutta High Court

Case No: Special Appeals Nos. 481 and 482 of 1871

Nowrattam Maiti and
Others

APPELLANT

Vs

Saddanando Maiti

RESPONDENT

Date of Decision: Nov. 24, 1871

Judgement

E. Jackson, J.

The special appeal to this Court was commenced by urging that as no Permanent Settlement had been carried out in the district of Cuttack, the provisions of Act X of 1859 did not apply to Cuttack. The express words of section 15, Act X of 1859, include any person possessing a permanent, transferable interest in land, intermediate between the proprietor of an estate and the ryots, who, in the provinces of Bengal, Behar, Orissa, and Benares, holds a talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement. The word "Orissa" would include the district of Cuttack, under ordinary circumstances, but it is said that the words "from the time of the Permanent Settlement" must confine the operation of these provisions to those districts of Orissa where a Permanent Settlement has taken place. An illustration was mentioned with reference to this argument from the Soonderbuns which have not been included in the Permanent Settlement of Bengal: and it was urged that a ryot who held lands from the time of the Permanent Settlement in the Soonderbuns would not be entitled to the presumption of section 4, Act X of 1859. There can, however, be very little doubt that as regards the whole of the Province of Bengal the law applicable to all suits for enhancement of rent is Act X of 1859, and that any ryot, even in the Soonderbuns, might claim the benefit of the presumption of section 4 of that Act, or any under-tenure-holder might claim the benefit of the presumption of sections 15 and 16 of the Act. The law, Act X of 1859, is applicable to all the provinces mentioned in the law, and it is not necessary in suits coining under it to prove that the land to which the suit relates has been the subject of a Permanent Settlement. It is said that it is impossible to ascertain when the Permanent Settlement of Cuttack took place, as in fact there has been no such settlement. We do not think it necessary in this case finally to decide this

question, as the plaintiffs are fully entitled to a decree on the merits. The next argument which has been put before us is, that even if the provisions of sections 15 and 16 of Act X of 1859 apply to this case, still the plaintiffs have not proved that they have a permanent transferable tenure, and they have not proved that they have held that tenure at an unvaried rate for twenty years prior to the institution of the suit, but that one of their documents proved that there had been a change in the rent. There does not appear to have been any contention in the lower Court that, if the plaintiffs could make out that they held a surborakari tenure, their tenure was one not coming within the provisions of section 15 of Act X. The plaintiffs have produced very good evidence to show that long before the defendant had any connection whatever with this land (he being a late purchaser and lease-holder), so far back as thirty years ago, their family put forward a claim to this surborakari tenure. The first documents in proof of this tenure produced by the plaintiffs are the records of the settlement of 1842. Claims were then put forward by the ancestor of the present plaintiffs who held these lands as surborakars. These claims were not enquired into, and no decision was come to upon them, but the mere fact that these claims were then put forward and recorded in the Survey record is strong corroboration of the then existence of the plaintiffs' tenure. In addition to this, there is another document, namely, an arbitration award which was passed in a contest between the surborakars on the one hand and the landlord on the other. The question in dispute was the amount of rent which should be paid for this tenure in lieu of the kahans of cowris which had been fixed originally to be the rent. The very circumstance of the rent being fixed originally in cowris is very strong evidence that this tenure was a very old one. This arbitration award in 1251 (1843) can leave no doubt in any person's mind that there was admittedly a surborakari tenure, and that the rent which was formerly paid in cowris was by that arbitration award changed into a money rent. The fact then, of the surborakari tenure has been found by the Judge upon this evidence, and it does not appear that the defendant, the landlord, has given any evidence which could satisfy the Judge that the plaintiffs were holding a new and lately acquired tenure which had formerly been in the possession of other persons; indeed, the landlord has not attempted to give the usual evidence to prove such facts, and there can be no reason to interfere in any way with the decision of the Judge on the question that this was a surborakari tenure. But it is said that this tenure is not one of the tenures mentioned in section 15 of Act X. In the first place there appears to have been no contest of this kind in the lower Court, and no such question was raised. Surborakari tenures are well known tenures in Cuttack. The reports of Messrs. Mills and Ricketts, two officers of Government who had perhaps a more intimate acquaintance with the tenures of Cuttack than any other Civilians, have been produced in Court, and in them these surborakari tenures are alluded to amongst the other mokurrari tenures of the Province. It is not said that a surborakari tenure cannot be enhanced, but there seems to be no doubt that they are permanent and transferable tenures which can, if proper measures are taken at the proper time, have their rents enhanced. There is every reason to believe that this tenure has descended from the ancestors of the present plaintiffs for some generations down to the present holders of it. It is undoubtedly a permanent hereditary tenure, and there seems, as it stands at present,

every reason to conclude that such a tenure would be transferable, and certainly on the other hand the defendant not only has not attempted to object that a surborakari tenure is not transferable, but also has not attempted to prove the fact. In addition to this, however, the very circumstance that the defendant is here seeking to enhance a two-anna share of a surborakari tenure instead of enhancing the whole of the tenure, is sufficient ground for decreeing the plaintiffs' suit. If the defendant had proved that the plaintiffs were pahi ryots, i.e., ryots-at-will, of course this objection as regards the surborakari would have been of no avail, but the plaintiffs having proved that they hold a portion only of a surborakari tenure, the Judge was quite right to dismiss the suit to enhance the rent of a portion of the tenure.

2. The special appeal to this Court is dismissed with costs.

(¹) See sections 16 and 17, Act VIII of 1869, (B.C.) The words "in the provinces of Bengal, Behar, and Orissa," in section 15 of Act X of 1859, are omitted in section 16 of Act VIII of 1869, (B.C.)

(²) See pages 19 and 20 of Mills' Report on the Settlement of Cuttack, and page 65, part 9 of Ricketts' Reports on the Districts of Midnapore, including Hidelee and Cuttack.