

(1879) 05 CAL CK 0004

Calcutta High Court

Case No: None

Sarat Soondary Dabea

APPELLANT

Vs

Anund Mohun Surma
Ghuttack and Others

RESPONDENT

Date of Decision: May 19, 1879

Citation: (1880) ILR (Cal) 273

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

Bench: Division Bench

Judgement

Richard Garth, C.J.

This is a suit by the zamindar to enhance a ten-annas share of a dependant taluq.

2. The only defence which it is necessary for us to consider, is, that the taluq in question has been held at a fixed rate of rent from before the time of the Permanent Settlement.

3. The lower Court has found, that the ten-annas share, which it is sought to enhance, has been held at a fixed rent of Rs. 510-13-5 for the last twenty years, and consequently that the rent cannot be enhanced.

4. An objection has been taken by the plaintiff (the appellant), that the evidence upon which the lower Court has found this fact is insufficient in point of law; but we think that there was some evidence to justify the finding, and that the sufficiency of it was a question for the Court below.

5. There are, however other circumstances in the case, which raise an important point of law, and to which the Judge does not appear to have attributed their due weight.

6. It appears that upwards of twenty years ago, the zamindari under which the taluq was held was partitioned under a butwara. There was no division made of the area of the villages which constituted the taluq, but it was partitioned into three

undivided shares, which were respectively allotted to each of the three zamindars between whom the butwara was made,--a ten-annas share to one, a four-annas share to another, and a two-annas share to the third.

7. The defendants, the taluqdars, continued to hold the entire property, as they had done before; but the rent being thus apportioned by law, the defendants from that time paid the apportioned rent severally to each of the parties entitled to it.

8. It then appears that in March 1861 a suit was brought against the defendants to enhance the rent of the two-annas share; the result of which was, that the rent of that share was enhanced. And it also appears, that the plaintiff herself brought a suit in April 1863 to enhance the rent of the ten-annas share, and that a decree was obtained in the Court below for enhancement, although the High Court on appeal reversed the judgment, not because the enhancement was improper, but on the ground that the plaintiff was a minor, and had no right to sue otherwise than by a guardian.

9. In neither of these cases, so far as it appears, did the defendants show that they had a right to hold at a fixed rent.

10. Then comes the question, whether, having regard to the fact of the rent of the two-annas share having been then enhanced in the year 1861, it can be said that the defendants, although they have held the ten-annas share at a fixed rent for twenty years before suit, are entitled to the benefit of Section 17 of the Rent Law.

11. The Judge seems to consider that the plaintiff cannot take advantage of the enhancement of the rent of the two-annas share, because she was no party to the decree. But we think that the fact of the plaintiff having been no party to the decree makes no difference in that respect. The defendants were parties to the decree, and as against them the decree shows clearly that the rent was enhanced.

12. Can then the defendants say, in the face of that decree, that the rent of their taluq has not been changed for a period of twenty years before suit?

13. In order to determine this question, we must first see what is the meaning of the word "taluk" in Section 17. The Judge apparently considers it to mean, not the original taluk, the rent of which has been divided, but the ten-annas share of that taluk which by means of the butwara has now become a separate tenure; because he finds that the rent which has remained unchanged for twenty years is the sum of Rs. 510-13-1-1, which is the apportioned rent of the ten-annas share.

14. But this view, we think, is not only erroneous in point of law, but it is one which, if it were correct, would not entitle the defendants to the benefit of Section 17; because, assuming the ten-annas share to be the "taluk" intended by that section, it is plain that it has only existed since the time of the butwara, and not from the time of the Permanent Settlement.

15. We have no doubt that the "taluk" which is intended by Section 17 is the original taluk which is now divided; and we think that, if the defendants could show that the rent of that taluk had remained unchanged either in its original entirety, or apportioned as it has been under the butwara, they would be entitled to the benefit of the section.

16. The apportionment effected by the butwara was for the benefit of the zamindars, and as long as the apportioned rents continued to amount in the aggregate to the rent of the original taluk, it would be obviously unjust that the defendants should be placed in a worse condition by the result of the butwara proceedings.

17. But looking at the question in this light, it is impossible for the defendants to say, that the rent payable for the original taluk has remained unchanged during the last twenty years; because the enhancement of the rent of the two-annas share has of course also enhanced the rent payable for the whole taluk.

18. We think, therefore, that the judgment of the lower Court is Wrong in this respect, and that the defendants are not entitled to avail themselves of Section 16 or 17 of the Rent Law.

19. But then we have had some doubt whether, under the circumstances of this case, the rule laid down by the Full Bench of this Court in the case of *Durga Pershad Myti v. Joy Narain Hazra* (2 Cal. Rep. 370); S.C., ILR Cal. 96) would not debar the plaintiff from obtaining the enhancement which she claims. If it did operate as a bar, of course there would be no use in sending the case back to the lower Court. But we think that the rule laid down in that case is not applicable to this. There the arrangement for payment of the rent to the several shareholders did not put an end to, or affect, the original lease of the entire tenure. Here, on the other hand, the butwara proceedings did effect such a complete change in the nature of the original tenure, as to create three new tenancies in the place of the old one.

20. The judgment of the lower Court will therefore be reversed, and the case will be remanded to that Court, in order that the question of enhancement may be tried upon its merits.

21. The appellant will have her costs in this Court.

Prinsep, J.

22. I entirely agree in this judgment. I would only add that, though I am bound by the terms of the judgment of the Full Bench referred to, I do not altogether concur in the view taken.