
(1878) 05 CAL CK 0004

Calcutta High Court

Case No: None

Abinash Chunder Dutt

APPELLANT

Vs

Taru Patur

RESPONDENT

Date of Decision: May 17, 1878

Citation: (1879) ILR (Cal) 79

Hon'ble Judges: Tottenham, J; L.S. Jackson, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

Various questions have been raised on the part of the special appellant, one of which is that the plaintiff's suit must fail, because it was a suit for enhancement and no notice of enhancement had been served on the defendant. It seems manifest from the terms of the plaint and of the written statement also that this is not really a suit for enhancement. What the plaintiff asks for is a declaration of right to receive the full rent of 20 bighas, and this prayer of the plaintiff is specially met by the defendant's averments that he had for a particular reason a right to hold the land at half the current rate. He also alleged that he had always been holding at this half rate. The plaintiff, who is a purchaser of the estate, which was formerly a khas mehal, produced as evidence of what the rates were, certain proceedings of the Deputy Collector under Reg. VII of 1822. Those proceedings were commenced in 1843 and concluded in 1845. To that the defendant objects, in the first place, that the jamabandi, which is the principal document referred to, has not been proved; and secondly, that it is of no effect unless the assent of the ryots to it is proved. The Judge held, and I think quite correctly, that, for the purposes of the Evidence Act, this jamabandi was a public document. I think there can be no doubt whatever that the act of a Deputy Collector, in making a settlement or even an enquiry under the provisions of Reg. VII of 1822, is that of a public officer, whether it be judicial or executive; probably it partakes of both characters, and that the record of such acts is a public document. I also agree with the Judge in the opinion that there is no authority for holding, as the Munsif appears to have hold, that such jamabandi was

dependant for its validity on its being assented to by the ryots. We have, therefore, a record of the tenants' holdings and the rates of rent payable in 1843, and in that jamabandi the defendant's holding is described. The defendant seeks to avoid that by declaring that he is entitled to hold, and has always held, at half rates. On that the Judge observes that the defendant has given no documentary evidence whatever. He, therefore, considers that the defendant has failed to prove that which he set up. In these circumstances, the plaintiff's case being supported by the public act and record of a Deputy Collector, and the defendant's plea being wholly unproved, it appears to me that the judgment of the lower Appellate Court is quite correct, and this appeal must be dismissed with costs. This judgment will apply to the other appeals.