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Calcutta High Court

Case No: Special Appeal No. 88 of 1871

Pratap Narayan Mookerjee		APPELLANT
	Vs	
Madhu Sudan Mookerjee and Others		RESPONDENT

Date of Decision: June 9, 1871

Final Decision: Dismissed

Judgement

Paul, J.

The plaintiff, as the zamindar of one-half of Mauza Shabanda, sued the defendants, as ryots holding 18 bigas and some katas of land in that mauza, for one-half of the rents of the year 1276 (1869-70), after deducting therefrom his individual one-seventh share of the same, and he based his claim to such rent on a settlement made in the course of certain resumption proceedings in which the sum claimed as rent was set down against the names of the defendants and the plaintiff as ryots of the 18 bigas and odd katas of land. The relations between the parties are somewhat complicated, but they are as follows: The plaintiff and the defendants are seven brothers, and they jointly inherited from their father who died in 1263 or 1856, the mokurrari tenure of the Mauza Shabanda granted sometime previously by the zamindar. They also inherited one-half of the zamindari right in that mauza from their father who had acquired the same previous to his death; and it would appear that the plaintiff himself purchased the other half of the zamindari right in the above named mauza in 1852. Sometime after the death of the father of these parties, Mauza Shabanda was resumed by Government as an invalid lakhiraj. In the course of resumption proceedings an assessment was made on the lands of the resumed mauza, and according to that assessment the plaintiff and his brothers, who were and are ryots of the 18 bigas and odd katas above referred to, were assessed at Rs. 8-7 in respect of those lands. A settlement was, on the 26th March 1867, made by Government with the plaintiff and his brothers, on the usual terms of half jumma, of the whole mauza. The plaintiff was dissatisfied with this settlement as he claimed to be zamindar in his individual right of half of the mauza.

2. The plaintiff accordingly brought a suit in the Civil Court against his brothers (the present defendants) and others to enforce his right to have the settlement of half the mauza made with him separately. This suit the plaintiff instituted on the 12th April 1867, and he obtained a decree therein declaring his separate right and title to half of the mauza. The result of this suit was that the settlement was reformed by its being made as regards half of Mauza Shabanda with the plaintiff, and the other half with the plaintiff and the defendants jointly. Having succeeded thus far, the plaintiff next proceeded to institute the present suit.

3. The plaintiff states that he is zamindar of half of the mauza; that the defendants jointly with himself are ryots of 18 bigas, 3 katas of land in Mauza Shabanda; that according to the settlement made Rs. 8-7 is the rental fixed as payable by himself and his brothers in respect of these lands, and that he is entitled to half of Rs. 8-7, after deducting his one-seventh share of the same. The defendants pleaded, in answer to the plaintiff"s claim, that an intermediate mokurrari tenure existed and was interposed between the zamindar and the ryots, and that consequently the rents payable by them as ryots were not payable to the zamindar, but to the mokurraridars.

4. The plaintiff, in refutation of this plea, insisted that the effect of the resumption and settlement was to annihilate and destroy the mokurrari tenure, and that the mokurrari tenure being thus extinguished, he was entitled to take the rent directly from the ryots. The first Court, relying on the decision of the High Court in Mussamat Farzhara Banu v. Mussamat Azizunnissa Bibi B.L.R., Supp. Vol., 175, ruled that the resumption of the lakhiraj mauza did not extinguish the mokurrari, and held as a necessary result from this ruling that the plaintiff"s action for rent against the ryots was not maintainable.

5. The lower Appellate Court upheld the decision of the first Court. From the decision of the latter Court, this special appeal has been preferred, and in the course of the argument addressed to us by Baboo Krishna Sakha Mookerjee for the appellant, the contention raised before the lower Courts has been very ably put forward in various shapes. These arguments urged with so much diversity, resolved themselves into one main ground on which the judgment of the lower Court is assailed, namely that by the resumption the mokurrari title was extinguished.

6. The appellant bases his contention on rulings of the late Sudder Court--Mohunt Sheodass v. Bibi Ikram S.D.A., 1850, 167 and Anundmoye Chowdrain v. Ramkunt Sen S.D.A. 1860, 661, 662. In these cases, it was held that the resumption of an estate held as lakhiraj operated in extinguishing all under-tenures. A Division Bench of the High Court, disapproving of this enunciation of the law, referred the question of the extinguishment of under-tenures by the resumption of the parent estate to a Full Bench. A Full Bench of the High Court in Mussamat Farzhara Bibi v. Mussamat Azizunnissa Bibi B.L.R., Supp., Vol. 175, declared the law on the subject as follows:--

When a lakhirajdar has entered into a contract with a tenant, whether for a term, or in perpetuity, both parties are in strict law bound to the conditions of the contract. We therefore do not think that the mere resumption of the lakhirajdar''s tenure by Government, that is the mere fact that that tenure has been rendered liable for the payment of revenue can of itself as a matter of law dissolve the contract entered into between the parties.

7. The proposition thus enunciated is not supported by any full reasoning on the subject, and the case before the Sudder-Court in 1850, wherein the lakhirajdar having to pay Rs. 150 as the jumma fixed on the lands held in mokurrari whilst the mokurrari jumma was only Rs. 10, sought on that ground to extinguish the mokurrari tenure, exhibited so much of apparent hardship, that we have deemed it right to look deeper into the principle which establishes the rule that the resumption and settlement of a lakhiraj estate does not operate in extinguishing under-tenures.

8. Obviously the argument which advances the proposition that upon and by reason of the resumption and settlement of a lakhiraj estate all under-tenures are extinguished, must proceed on the ground that a new estate is created under a settlement consequent on a resumption; for if a new estate be not created, we are not aware of any principle of law which would entitle the lakhirajdar to be released and relieved from his contract by which he created a mokurrari, or any other under-tenure. The question which we have to consider is whether, under the circumstances already stated, a new tenure is created under a settlement with the lakhirajdar consequent on a resumption.

9. In order to obtain a clear view of the subject, it is necessary to glance at some of the sections of Regulation XIX of 1793 and Regulation XI of 1819.

10. Section 5, Regulation XIX of 1793, provides as follows:

By continuing the proprietary right in the land to the grantee or possessor in the cases specified in the preceding section, instead of dispossessing him of the land altogether agreeably to former usage and assessing the land in the mode provided in the two following sections, a liberal provision will be left to him. Where the grant may have been made before the Bengal year 1178 (1771) or the Fusli or Willaiti year 1179, the proprietor will hold his land as an estate paying a fixed revenue of only half the amount assessed on other malguzari lands in the country; and where the grant may have been made subsequent to the, above mentioned periods, he will hold the land as subject to the payment of the same revenue as other lands assessed with revenue under the rules for the decennial settlement, as hereafter directed.

11. Section 6 of Regulation XIX of 1793 enacts that the revenue assessed on lands not exceeding 100 bigas alienated before the 1st December 1790 is to belong to the zamindar.

12. Section 7 of the same Regulation enacts that revenue on lands exceeding 100 bigas alienated prior to 1st December 1790 shall belong to Government.

13. Section 8, Clause 1, provides as follows:-- "The amount of the revenue payable from the lands specified in section 7 is to be adjusted according to the following rules:--

If the grant shall have been made previous to the Bengal year 1178 (1771) or the Fusli or Willaiti year 1179 (according as the lands may be situated in Bengal, Behar, or Orissa), the revenue to be paid to Government shall be equal to one-half of the annual produce of the land, calculating according to the rates at which other lands in the pergunna of a similar description may be assessed. If any part of the land shall be uncultivated, the proprietor is to be required to bring it into cultivation, and to pay such russud or progressive increase, to be regulated with a reference to the reduced rate of the assessment on the cultivated land, as the Board of Revenue, with the sanction of the Governor General in Council, may deem reasonable. The produce of the land shall be ascertained by a survey and measurement, one-half the expense attending which is to be defrayed by the proprietor, in the event of his agreeing to the jumma required of him, and the other moiety by Government; or by such other mode of investigation as the Collector, with the sanction of the Board of Revenue, may judge advisable. If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held khas, under the rules prescribed in Regulation VIII of 1793. If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the lands at such fixed revenue for ever. If the grant shall have been made subsequent to the Bengal year 1178 (1771) or the Fusli or Willaiti year 1179 (according as the lands may be situated in Bengal, Behar, and Orissa), the revenue or jumma to be paid to Government from the land shall be assessed agreeably to the rules prescribed in Regulation VIII of 1793, for forming the settlement of estates paying revenue to Government, and the produce shall be ascertained, and the expense of the investigation defrayed, in the manner specified with regard to the lands in the preceding clause. If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held khas, under the rules for the decennial settlement. If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the land at such fixed revenue for ever.

14. Regulation II of 1819 enacts more efficient remedies for the assessment of lakhiraj estates, but by section 7 provides for the attachment of estates (the subject of investigation) only in case the party in possession withhold certain necessary and important information at his command.

15. These provisions of the law on the subject of what is called resumption and settlement of lakhiraj estates, distinctly show that the owner of a lakhiraj estate is neither divested of his property in, nor of his possession of, such estate resumed for the purpose of assessment. An owner of this description of estate is made liable to the payment of the

assessment to which his lands were by law subject, and which liability from the fact of the estate being resumed, must be taken to have been long evaded. The lakhirajdar, on agreeing to pay the assessed rent by entering into a settlement for the same, is left in possession of his estate, which by the operation of the settlement is brought into the category of permanently settled estates. It thus appears clear that the settlement of revenue assessable in consequence of resumption does not and cannot confer a new estate on the lakhirajdar, it merely fixes and limits the demand as respects revenue originally chargeable on the estate of the lakhirajdar. These being our views, it follows that the mokurrari lease was not cancelled or extinguished by the resumption and settlement, and consequently the contention of the defendant ryots that they are liable to pay rent to the mokurraridar and not to the zamindar is made out. Under these circumstances, the suit of the plaintiff was rightly dismissed by the lower Courts, and we affirm those decisions by dismissing this appeal with costs.