Pran Krishna Saha and Another Vs Trailakhya Nath Choudhuri and Others

Appeals From Appellate Decrees Nos. 727, 728, 729 to 731, 732 and 733 of 1912

Court: Calcutta High Court

Date of Decision: Jan. 28, 1915

Final Decision: Allowed

Judgement

1. This appeal arises out of a suit instituted under sec. 106 of the Bengal Tenancy Act. It appears that in the record-of-rights prepared under

Chapter X of the Bengal,Tenancy Act, the land in suit was entered as the mal land of the Putnidar Defendants, and as constituting the holding of the

other Defendants under the former. The Plaintiffs thereupon instituted this suit under sec. 106 of the Bengal Tenancy Act for a declaration that the

land formed the rent-free Brahmottar tenure of the Plaintiff No. 1, under whom the other Plaintiffs held as tenants, and for correction of the entry in

the record-of-rights accordingly. The Courts below have found in favour of the Plaintiffs and the Defendants have appealed to this Court. It is

contended on behalf of the Appellants that the Revenue Officer in deciding disputes in suits under sec. 106 of the Bengal Tenancy Act is confined

to a consideration of the question of possession alone, and cannot try any question of title, and that the Plaintiffs having been found to have been

out of possession, at the date of the final publication of the record-of-rights, and also at the date of the suit, the suit ought to have been dismissed.

The Appellants rely on the cases of Padmalav v. Lakhi Rani 12 C.W.N. 8 (1907), Kali Sundari Debya v. Girija Sankar Sanyal 15 C.W.N. 974

(1911). and Ram Chandra v. Nanda Nandanananda Gossain 18 C.W.N. 938 : s.c. 19 C.L.J. 197 (1913) in support of their contention.

2. It is contended on behalf of the Respondents, that these cases were between rival proprietors, and are therefore distinguishable. The reason why

in a case between rival proprietors, the Court is confined to a consideration of the question of possession, as was pointed out by Coxe, J., in

Mohunt Padmalav v. Lakhi Rani 12 C.W.N. 8 (1907), is that the khewat recording proprietary interests is drawn up with reference to the

Registers kept by the Collector under the Land Registration Act, which are prepared according to possession and possession alone, and have no

concern with title unaccompanied by possession, and in that very case it was observed by the learned Judge that in a suit between tenant and

tenant, or be tween a landlord and tenant, questions other than that of possession may legitimately arise.

3. The present case is not between rival proprietors. The Defendants (or some of them) are putnidars and dur-putnidars of the mauza in which the

lands are situated, and the Plaintiff No. 1 claims to hold the lands in the mauza in rent-free right derived from the zamindars under whom the

Defendants hold the mauza in putni and dur-putni. The cases therefore relating to rival proprietors may be distinguished from the present case.

4. The learned pleader for the Respondents contends that the case comes under cl.(j) of sec. 102 of the Bengal Tenancy Act, under which the

Revenue Officer may, if the land is claimed to be held rent-free, record, ""whether or not rent is actually paid, and if not paid, whether or not the

occupant is entitled to hold the land without payment of rent, and if so entitled under what authority,"" and that under sec. 106 the Revenue Officer

may decide a dispute regarding any entry which a Revenue Officer has made in, or any omission which the said officer has made from, the record

when such dispute is (among other matters) as to whether land held rent-free is properly so held or ""as to any other matter.

5. The words "" entitled to hold "" in see. 102, cl.(j), indicate that the question of title may be gone into, but then the words in sec. 106 ""as to

whether land held rent-free is properly so held"" and those in sec. 102, cl.(j), ""if the land is claimed to be held rent-free ""taken with the other

words in that section, viz., whether or not the occupant is entitled to hold the land without payment of rent, go to show that the land must be in the

occupation of the person who claims to hold it rent-free at the time the records of-rights is made and published. It is found that the Plaintiffs were

dispossessed before the settlement proceedings were commenced. That being so, the Plaintiffs were not the occupant of the land. The words ""or

as to any other matter"" in sec. 106 are no doubt very comprehensive, but it seems to us that they must have reference to the matters indicated in

sec. 102, and that sec. 106 in so far as it relates to the decision of disputes with respect to land claimed to be held rent-free contemplates a suit by

a person who is in possession of land, which he claims to hold rent-free, to have an entry or omission in the record with respect to it corrected.

6. We are of opinion that a person who is not in possession of land which is claimed as rent-free at the date of the record-of-rights cannot have the

mere question of his title to hold the land rent-free tried in a suit under sec. 106 of the Bengal Tenancy Act. Moreover, the Plaintiffs were

admittedly out of possession at the date of the suit under sec. 106. They cannot obtain possession of the lands in a suit under sec. 106 [see Nilmani

Kumar v. Kedar Nath Ghosh (4) 17 C.W.N. 750(1913).], and they do not claim possession in the suit, though a declaration has been made that

they are entitled to get possession. It is conceded that, that portion of the order cannot stand, but it is contended that they are entitled to have the

entry as to mal land corrected in this suit, and that they may obtain possession by a suit in the Civil Court. If, however, the Plaintiffs have a title and

their claim is not barred by limitation, as found by the Courts below, they are entitled to possession. But they cannot get all the reliefs in a suit under

sec. 106, whereas they can get a complete remedy by a suit in the Civil Court.

7. The appeal is therefore allowed; but having regard to the fact that the ground upon which the appeal succeeds was not specifically taken in the

Courts below, we direct that each party will bear his own costs in all the Courts. This judgment will govern Appeals Nos. 728, 729 to 731, 732

and 733 of 1912.