Abdul Wahed Khan Vs Natabar Ghose and Others

Court: Calcutta High Court

Date of Decision: Aug. 29, 1917

Citation: 42 Ind. Cas. 280

Hon'ble Judges: Lancelot Sanderson, C.J; Teunon, J

Bench: Division Bench

Judgement

Lancelot Sanderson, C. J.

1. This is an appeal by the plaintiff from the decision of Mr. Justice Newbould, whereby he affirmed the judgment of the District Judge.

2. The suit was for the khas possession of certain land by ejecting the defendants on whom, the plaintiff said, he had served notice u/s 49 of the

Bengal Tenancy Act. The plaintiff alleged that he was a raiyat and that the defendants were under-raiyats.

3. The defendants'' case was that they were not under-raiyats, that they themselves were raiyats and the plaintiff was a tenure-holder. Their further

defence was that even if they were under-raiyats, notice had not been served upon them.

4. The learned District Judge came to the conclusion that the notice had not been served and secondly, that the defendants were raiyats and

consequently could not be evicted.

5. Now in this Court it is admitted that the appeal must be dismissed, because proper notice was not served upon the defendants, even if they

were under-raiyats. But it was urged by the learned Vakil for the appellant that if the finding of the learned Judge that the defendants were raiyats

and the plaintiff was a tenure-holder was allowed to stand, it would prejudice the plaintiff in any future proceedings which might have to be taken.

Consequently, the point has been argued.

6. As I have said, there is no doubt about the result of this appeal, because it must be dismissed on the ground of the non-service of notice. But

with regard to the other point, namely, whether the plaintiff was a raiyat or a tenure-holder and the defendants were raiyats or under-raiyats, in my

judgment this matter ought to be left open for decision in the future, if it becomes necessary; and the reason for my conclusion is that I do not think

that the conclusion of the District Judge has been arrived at upon a proper principle. it is common ground that the origin of the plaintiff''s tenancy is

hidden in obscurity and that being so, the subsequent conduct of the parties may be considered for the purpose of drawing an inference as to the

nature of the tenancy in its inception. This was laid down in Mokesh Jha ,v. Manbharan Mia 5 C. L. J. 522 (the case was dealing with a

document); ""The jote extends over 300 bighas and although permission is given to her to cultivate herself or to get the lands cultivated, it is at the

best an ambiguous document; and what the Courts have to see is how since the grant was made the parties have chosen to deal with the lands."" I

pause there for one moment and say, for what purpose? What is the purpose of seeing how the parties have chosen to deal with the land P We are

to look at the surrounding circumstances and see how the parties have chosen to deal with the lands, for the purpose of drawing an inference as to

what was the tenancy in-its inception.

7. Again that point was made clear by the decision to which my learned brother Mr. Justice Teunon, was a party in the of Pramotha Nath Kumar

v. Nilmoni Kumar 10 Ind. Cas. 431: 15 C. W. N. 902: 14 C. L. J. 38. In dealing with the ease of Midnapur Zemindary Company v. Bamapada

Roy 10 Ind Cas 430: 13 C L. J. 485., the learned Judges said: ""The learned Judges who decided that case merely laid down that, if the terms of

the original grant are ambiguous, the subsequent conduct of the parties may be looked into to ascertain the nature of the tenancy in its inception.

So in this case I think the origin of the tenancy being lost in obscurity it was open to the learned Judge to inquire into the conduct of the parties for

the purpose of ascertaining the nature of the tenancy in its inception. But it does not seem that he has done that, because be says: For the above

reasons I would agree with the lower Court that so far as the Dutts and the defendants are concerned the former converted themselves into rent

receivers by their conduct over a lengthy period and they (so far as defendants are concerned) and consequently their successor (the plaintiff) must

be regarded as tenure-holders."" That judgment, I think, is consistent with the learned Judge''s thinking that the Dutts were originally raiyats, but that

they W by their conduct, shown that they had converted themselves from the status of raiyats into that of tenure-holders. In my judgment, inasmuch

as his judgment is consistent with this view, the safest thing to say that this point, which has arisen between the plaintiff and the defendants, ought to

be left open so that it may be decided in future if it becomes necessary, and the plaintiff ought not to be debarred by the finding of the lower

Appellate Court on the point.

8. Subject to this observation; the appeal must be dismissed with costs on the ground that no notice was served upon the defendants.

Teunon, J.

9. I agree.