

(1913) 02 CAL CK 0027

Calcutta High Court

Case No: Appeal from Appellate Decree No. 4107 of 1910

Tinkari Mukerjee

APPELLANT

Vs

Satya Niranjana Chakrabutty

RESPONDENT

Date of Decision: Feb. 25, 1913

Final Decision: Allowed

Judgement

1. This is an Appeal by the Defendant in a suit for rent. The rent is claimed for land which was originally chowkidari chakran and was, upon resumption, settled with the zemindar, the predecessor in interest of the Plaintiff. The Defendant resists the claim on the ground that the name of the Plaintiff has not been registered in the books of the Collector under sec. 78 of the Land Registration Act of 1876. Upon this question the Courts below have taken divergent views. The Court of first instance held that the objection was well-founded and dismissed the suit. Upon appeal the District Judge has held that sec. 78 has no application and has accordingly decreed the suit. Sec. 78 of the Land Registration Act of 1876 provides that no person shall be bound to pay rent to any person claiming such rent as proprietor or of an estate in respect of which he is required by the Act to cause his name to be registered, unless the name of such claimant shall have been registered under the Act. We have consequently to determine whether the Plaintiff is, within the meaning of this section, a proprietor of an estate with respect to which he is required by the Act to cause his name to be registered. The question is apparently one of first impression and is by no means free from difficulty. Sec. 51 of the Village Chowkidars Act of 1870 describes the effect of transfer of resumed chakran lands to the zemindar. It provides that the order of the transfer shall operate to vest in the zemindar lands therein mentioned subject to the amount of assessment. Sec. 52 then provides that the amount of such assessment shall be a permanent yearly charge on such land and shall be payable to the collecting member of the Panchayet yearly in advance by the persons for the time being entitled to recover rent of such lands from the occupier thereof. The District Judge has held that inasmuch as the amount of assessment is payable to the collecting member of the Panchayet, it is not

"revenue" within the meaning of that word as used in the definitions of the terms "estate" and "proprietor" in cls. 2 and 8 of sec. 3 of the Land Registration Act of 1876. We are not prepared to accept this view as well founded. But the provisions of the Village Chowkidars Act which are really relevant to the question in controversy are to be found in secs. 54 and 55. These describe the procedure for service of notice of arrears upon the defaulter as also the mode and effect of sale of the land in the event of non payment of the assessment. Sec. 55 provides that unless the arrears are paid within the time mentioned in the notification for sale issued under sec. 6 of Act XI of 1859 such land shall be sold according to the provisions of Act XI of 1859, as if such lands were an estate within the meaning of Act VII of 1868. The language used here may lend some support to the contention that resumed chakran lands, when transferred to the zemindar, constitute an estate. But sec. 55 does not indicate that the resumed lands are to be deemed an estate for all purposes ; it merely provides that the sale is to take place as if such lands were an estate within the meaning of Act VII of 1868. Consequently it would not be right to infer, merely from the language used in secs. 54 and 55, that resumed lands, when transferred to the zemindar have the character of an estate impressed upon them for all purposes We are fortified in this view, when we find that the Board of Revenue has in the matter of the preparation of the registers contemplated by the Land Registration Act acted on the theory that lands so resumed and transferred to the zemindar do not constitute an estate within the meaning of that Statute. This circumstance completely destroys the force of the objection urged by the Defendant. For even if it be assumed that the Board of Revenue has proceeded upon an erroneous interpretation of the provisions of the Statute, the fact remains that no register is maintained by the revenue authorities of the registration of transfers of such lands, in which the name of the Plaintiff could have been registered. It has been established conclusively that, under the orders of the Board of Revenue, the only register maintained in respect of this land is a register in which the land is shown as settled with the zemindar: transfers are recorded only when such transfers have taken place by reason of sales held for realisation of arrears in accordance with sec. 65 of the Village Chowkidars Act of 1870. But the revenue authorities have expressly ruled that in such register no entries are to be made of intermediate private alienations. Consequently if the Plaintiff had applied to have his name registered, his application would have been refused. We are not prepared to hold that sec. 78 is a bar to the suit ; in our opinion, that section cannot rightly be applied to penalise the Plaintiff for failure to do what it was impossible for him to perform. We hold accordingly, that sec. 78 does not bar the claim, although not for the reasons assigned by the District Judge. In this view the decree of the District Judge must be affirmed : but it has been pointed out that the District Judge upon the findings of the Court of first instance which were not challenged before him by the Plaintiff should have allowed credit to the Defendant for Rs. 71-3 instead of Rs. 69. The decree will be amended in this respect. Subject to this variation the decree will stand affirmed with costs.