

(1913) 06 CAL CK 0023

Calcutta High Court

Case No: Appeal from Appellate Decree No. 1759 of 1910

Saradindu Narain Roy

APPELLANT


Vs

Benode Behary Mohata and
othersRESPONDENT

Date of Decision: June 30, 1913

Final Decision: Dismissed

Judgement

1. The suit out of which this Second Appeal arises relates to 7  bighas of land transferred to the zemindar Defendant by revenue officers acting, it is said, under the provisions of secs. 58 to 61 of the Village Chowkidari Act, 1870 (Ben. Act VI of 1870). It appears that in 1900 a different plot of land, measuring some 6 bighas, was resumed by the revenue authorities as the chowkidari chakran land of this Mouzah Bagkhela and was transferred to the zemindar. The zemindar sued for possession of that plot in 1905 and having succeeded in his suit he next in 1907 preferred an application to the Collector asserting that the proceedings in 1900 were vitiated by fraud and praying that the true chowkidari chakran lands should be correctly ascertained and made over to him. Proceedings were accordingly taken in the Court of the Commissioner appointed under sec. 58 of the Act, and by an order made by that office, under sec. 61, the lands now in suit were determined on the 24th February 1908 to be the chowkidari chakran lands of the village. By his order of the 20th March 1908 made under sec. 50 of the Act, the Collector accordingly transferred these lands to the zemindar. On the 25th February 1900, the Plaintiff sued to recover possession on the ground that the lands were not in fact the chowkidari chakran lands of the village but formed part of the jote chak Bagkhela. The suit having been decreed in both the Courts below the zemindar Defendant appeals and his contention here is that by virtue of the provisions of sec. 61 of the (sic) Chowkidari Act, 1870, the (sic) order of the 24th February (sic) and conclusive.
2. On the authority of an expression of opinion to be found in the case of Hira Lal Mukerjee v. Premamoyee Debi 2 C. L. J. 806 (1905) and ignoring the decision of this Court in the cases of Nobo Krista Mukerjee v. Secretary of State for India I. L. R. 11

Cal. 632 (1885), *Narendra Lal Khan v. Jogi Hari* 2 C. L. J. 107 at p. 118 : s. c. I. L. R. 32 Cal. 110 at p. 124 (1905) and *Madhu Sudan Banerjee v. Girish Chandra Ghosh* 2 C. L. J. 302 (1905), the Courts below overruled this contention, but here the answer of the Respondent is that the determination of the chakran lands in 1900 was also by an order under sec. 61 made by a Commissioner appointed under sec. 58 and that this order was final and conclusive and could not be reviewed by a second Commissioner in 1908. The Appellant contends that the transfer in 1900 was made by a Collector in a summary manner and not after proceedings before a Commissioner appointed under sec. 58. Though in the judgments of the subordinate Courts in connection with the proceedings in 1900 there were references to a Commissioner appointed under sec. 58 of the Act, we found it necessary to remand the case for clear findings of fact on the questions raised. The findings have been returned and it is now clear that the proceedings in 1900 were before one Harish Chandra Banerjee who had been appointed a Commissioner under sec. 58 of the Act by a Government notification, dated 26th June 1899. It is true that no order under sec. 61 has been produced but that is sufficiently explained by the fact that all the papers relating to the chowkidari chakran lands of this village and to the proceedings of 1900 have been destroyed. That the Commissioner, Babu Harish Chandra Banerjee, made an (sic) order sec. 61 is clear from the reference (sic) an order in Ex. IX, the order-(sic) the proceedings taken in 1907-8, see more particularly the orders numbered 10, 16 and 18. In order No. 16, the second Commissioner distinctly refers to his predecessor's order and professes to review it.

3. The proceedings in 1900 having been before a Commissioner appointed under sec. 58 of the Act and the Commissioner having made an order under sec. 61 we may safely presume that he acted in accordance with law and in his order set out the lands he had determined to be the chowkidari chakran lands and the boundaries thereof. In making this presumption we are fortified by the references in Ex. IX to the "old sanad" : by the fact that in 1905, the zemindar Appellant sued to recover possession of specified lands, and by the fact that his application to the Collector in 1907 was one for rectification of boundaries.

4. The order made in 1900 being final and conclusive, we are clearly of opinion that the said order could not be reviewed by a second Commissioner in 1908, and that the proceedings of the second Commissioner in determining the lands now in suit to be the chowkidari chakran lands of the village Bagkhela were ultra vires and contrary to law.

5. It may be that, as held in the case of *Nobo Krista Mukerjee v. Secretary of State for India* I. L. R. 11 Cal. 632 (1885), an order under sec. 61 may be set aside on proof of fraud or of non-compliance with the provisions of the law, but any such proceedings, we are of opinion, must be taken in the Civil Courts and in the present case the findings indicate that fraud, if fraud there were, was in connection with the second determination and not with the first. This Appeal is accordingly dismissed

with costs, three gold mohurs in all.