

## Indu Bhusan Bose Vs Atul Chandra Biswas and Others

**Court:** Calcutta High Court

**Date of Decision:** Nov. 26, 1924

**Citation:** AIR 1925 Cal 1114 : 87 Ind. Cas. 830

**Hon'ble Judges:** Ewart Greaves, J; Chakravarti, J

**Bench:** Division Bench

### Judgement

Chakravarti, J.

This is an appeal by the plaintiff and arises out of a suit; brought by the plaintiff against a number of defendants for

possession of 90 plots of land on the allegation that they appertain to his towji of which he is an ijaradar under the patnidar of Towji No. 203. The

defendants are numerous. Defendants Nos. 1 to 3 are said to be the legal representatives of one Sarola Sundari who held a tenancy under the

owners of the plaintiff's towji at a Jama of Rs. 50 which was subsequently reduced to Rs. 30. Defendant No. 4 is said to be a patnidar of a

neighbouring Towji No. 2498. Defendant No. 5 is alleged to be one of the co-patnidars with Defendant No. 4 who, we are told, has disclaimed

his right as a patnidar. Defendants Nos. 6 to 9 are zamindars of Towji No. 2498. I should have stated that Defendants Nos. 1 to 3 also claim to

be tenants under the proprietors of Towji No. 2498. The other defendants are either tenants of Defendants Nos. 1 to 3, Defendant No. 4 or

Defendants Nos. 6 to 9. It is not necessary for the purpose of this appeal to go into details of the cases of the various defendants. It appears that

the main Defence in the case was that the lands in suit did not appertain to the tenancy of Sarola Sundari, the predecessor of Defendants Nos. 1 to

3. The plaintiff's case further was that Towji No. 303 was let out in a patni so far back as 1891, that the patni was purchased by the plaintiff in

1902 and that the patni having been transferred to the Jessore Loan Company, the plaintiff took an ijara for 99 years from the said Company, The

plaintiff further alleged that the tenancy which I have mentioned before held by Sarola fell into arrears of rent and a decree was obtained by the

plaintiffs and the tenancy was sold on the 15th of July 1907. The plaintiff took symbolical possession on the basis of his purchase and he was

dispossessed from the land by the defendants in February 1908. The present suit was brought in 1919 well within 12 years of the date on which

the plaintiff took symbolical possession as against Defendants Nos. 1 to 3. As I have already stated, the main defence was whether the land

appertained to Towji No. 208 or to the neighbouring town of defendants and also whether the lands were covered by the lease of Sarola. It

appears that the Munsiff directed a local investigation for the purpose of ascertaining whether the lands did appertain to the plaintiff's towji or

outside it, and also for the purpose of ascertaining the boundaries of the jote held by Sarola. The Commissioner reported that in the absence of a

correct thak map and in the absence of field books of the thak, it was not possible to ascertain definitely whether the lands appertained to Towji

No. 203 or not. It seems to have been admitted in the Court of first instance that three plots of land really appertained to the tenancy of Sarola.

Numerous plots were given up by the plaintiff in the course of the trial, and so far as I can gather, the number of the plots was ultimately reduced

to about 55. The decree of the first Court was confined to the three plots in favour of the plaintiff and the rest of his claim was dismissed. On

appeal to the District Judge by the plaintiff, the learned Judge agreed with the Munsiff as regards the plots which had been decreed in favour of the

plaintiff. As regards the other plots, the learned Judge says that it was argued before him on behalf of the plaintiff that the plaintiff's claim really was

based upon his claim to Towji No. 203. So far as the tenancy of Sarola was concerned that having been sold was wiped out, and therefore,

whether the lands appertained to the jote of Sarola or not, so far as they appertained to Towji No. 203, they could be her property as owner of

Towji No. 203. The learned District Judge, in discussing that view of the case, says that the plaintiff claimed all lands which appertained to Towji

No. 203 beyond those which were covered by the lands of Sarola on the ground that Defendants Nos. 1 to 3 must have been in possession of

those of Towji No. 203 by their encroachment as tenants under the plaintiff of the waste lands or unoccupied lands of the plaintiff within Towji No.

203; and, therefore, if the plaintiff could establish that the lands did appertain to Towji No. 203 the defendants were bound to give the lands back

which they held by encroachment after the determination of the tenancy held by their predecessor. The learned District Judge, after discussing the

authorities, came to the conclusion that if the plaintiff had established that those lands were held by Defendants Nos. 1 to 3 and those who claimed

under them on the ground that they had encroached upon those lands, then all that the plaintiff would be entitled to would be merely a decree for

rent for the encroached lands because the tenants, when the tenancy continued, had acquired a title by adverse possession of a limited interest as

tenants. In that view the learned District Judge refused to direct a local investigation which, it appears he was inclined to grant, if any useful purpose

would have been served by a further investigation, because in one part of his judgment the learned District Judge thought that the report of the

Commissioner would be no safe guide for the determination of the question as to whether the lands were within the Towji No. 203 or Towji No.

2498, because the thak map was not supported by field books; but it appears that at the trial before the District Judge the field books were

produced by the defendants themselves and partly by the plaintiff and, therefore, there were materials upon which a proper investigation was

possible. But as we have already stated the learned District Judge appears to have refused to direct a further investigation because he thought that

the plaintiff would not be entitled to a decree for khas possession, In that view the learned District Judge dismissed the plaintiff's appeal who has

now preferred this second appeal to this Court.

2. In support of this appeal it was contended by the learned vakil for the appellant that the view taken by the learned District Judge as to the rights

of the plaintiff as regards the encroachment made by the tenant upon the waste land of the landlord and the tenant's rights to resist khas possession

on the determination of the tenancy was wrong, and for the ends of justice the case should be sent back for investigation by a Commissioner as to

whether the lands did appertain to one towji or the other. Dr. Mitter, who appeared for the defendants pointed out to us that there was difference

as to the defence raised by the various defendants; but we cannot at this stage go into that question. The learned District Judge disposed of the

case on the view that the case related, so far as the lands of Towji No. 203 were concerned, only between the plaintiff and the defendants who

claimed through Sarola. We think that the view expressed by the learned District Judge as to the right of the plaintiff as to the encroached lands

after the determination of the tenancy is not correct. In fact D. Mitter frankly admitted that the general law is that after the determination of a

tenancy, if a tenant had encroached upon any land and made it a part of his tenancy, he is bound to give up those lands to his landlord at the

determination of his tenancy. We think upon this ground that the decision of the learned District Judge should be set aside and that he should be

directed to order a local investigation by a competent Commissioner to determine the question upon the materials on the record or upon fresh

materials to be supplied, to determine how far the lands in suit appertained to Towji No. 203. So far. as the lands which fell within Towji No. 203

and are in the possession of Defendants Nos. 1 to 3, or in the possession of any one claiming through Defendants Nos. 1 to 3, the plaintiff would

be entitled to a decree for possession of those lands. We do not here dismiss or determine any question or issue which any of the defendants might

raise in the Court below on a title apart from the title of a tenancy held by Sarola. After the local investigation and after the determination of what

lands fell within Towji No. 203, the learned District Judge will dispose of all the issues which may be raised before him in view of the observations

which I have made above.

3. I need hardly add that this remand only affects the plots which the plaintiff did not abandon.

4. Costs will abide the result.

Greaves, J.

5. I agree.

6. The appeal has abated against Defendants Nos. 10, 20, 40, 44, 48, 55 and 58 named in the affidavit filed in Court on 36th November 1924

and stands dismissed as against their heirs.