Surjya Kanta Sarkar and Others Vs Babu Saroj Kumar Bose, Common Manager, Jalabari Estate

Court: Calcutta High Court

Date of Decision: Nov. 30, 1934

Final Decision: Dismissed

Judgement

R.C. Mitter, J.
The Plaintiff who is the Respondent before me instituted the suit against the Appellants and others for recovery of arrears of

rent and for imposition of additional rent for the lands in the possession of the Defendants in excess of the lands for which they had hitherto been

paying rent. The taluk of the Defendants, named Jasobant Sarkar, was created before the permanent settlement of Touzi No. 3846 of the

Bakarganj; Collectorate. Persons whom the Plaintiff represents purchased the said Touzi at a sale held by the Collector for realising arrears of

revenue on the 25th March, 1897. The quinquennial papers show that the said taluk comprised an area of 10 cottas only for which annas 8 was

the rent payable. Later on, the proprietors of Touzi No. 3846 recovered a decree against the Defendants in a suit instituted by them in 1925 at the

rate of Rs. 5-5-4 per year on the basis that the area of the taluk was 11 bighas. The Plaintiff has now instituted the suit claiming to have additional

rent assessed on the footing that the area of the taluk is 307 bighas. It appears that the Defendants" predecessors and other tenure-holders under

the proprietors of Touzi No. 3846 encroached upon large parcels of land belonging to the revenue-paying estates of other adjoining proprietors.

After their purchase at the aforesaid revenue sale, the Proprietors of Touzi NO. 3846 instituted a suit for possession against the predecessors of

the Defendants. They claimed in that suit possession of all the lands in the possession of the then Defendants on the footing that they appertain to

taluk (sic) was a taluk created after the Permanent Settlement. It was found in that suit that the said taluk was created before the Permanent

Settlement and the talukdars could not be evicted. It was also held that the purchasers got by their purchase at the Collector"s sale only the lands

which had been included in Touzi No. 3846 at the time of the Permanent Settlement [Baikuntha Nath Rai Chaudhuri v. Basanta Kumari Dassi 23

C. L. J. 151 (1915)]. Having failed in their attempt to get khas possession, an attempt is being now made on behalf of the representatives of the

said purchasers to have a very substantial increase in the rent.

2. The Defendants raised many defences, but the one material to the decision of this appeal which is only limited to the claim of the Plaintiff for

additional rent is that a good portion of the lands in suit is outside the Plaintiff"s estate. The further defence that the excess lands are being held by

them as appertaining to other taluks held under the proprietors of other adjoining estate has failed. It has been found that only 74 acres out of the

lands encroached upon by the Defendants appertain to the Plaintiff"s revenue-paying estates and the rest appertain to other estates--the total

encroachment being found to be 307 bighas. The learned Subordinate Judge found that the Plaintiff was entitled to additional vent on an area of

296 bighas (307 bighas less 11 bighas) and made the assessment at the rate of annas eight per bighas.

3. The Defendents preferred an (sic) appertain to Touzi No. 3846. The learned District Judge agreed with the learned Subordinate Judge and held

that the Plaintiff is entitled to have additional rent assessed on this area also.

4. Before me an attempt was made by the Defendants to re-open the question as to whether the Plaintiff was entitled to have additional rent

assessed on 74 acres of land found to be in the Plaintiff"s estate. Having regard to the fact that the said part of the case had been abandoned

before the learned District Judge, I did not allow the said point to be agitated before me. The appeal accordingly has been confined to the area

found to be outside the Plaintiff"s estate.

5. There is no express finding that the Defendants have acquired title to these lands by adverse possession against the rightful owners, but the

judgments proceed on the basis that they have acquired, such title. From the facts also it can be inferred that the Defendants had acquired such a

title at the date of the suit. There can be no question that if a tenant encroaches upon the lands of other persons and acquires title to them by

adverse possession, he acquires it prima facie for the ultimate benefit of his landlord, unless he had expressed a clear intention to hold it for his own

benefit only. There is no evidence in this case that the Defendants had expressed such an intention. But this, principle in my judgment would not

entitle the landlord to claim additional rent for such lands. The true (sic) principal is that if (sic)in any way, the (sic)entitle to take pos(sic) the lands

originally (sic) but also of the (sic) and the tenant would not be entitled to retain them. The cases of Naddyarchand v. Meajan I. L. R. 10 Cal. 820

(1884) and Prohlad Teor v. Kedarnath I. L. R. 25 Cal. 302 (1897) cited before me and before the lower Courts were cases of recovery of

possession of the encroached lands by the landlord. Esubai v. Damodar I. L. R. 16 Bom 552 (1891) was a case of encroachment by the tenant on

the lands of his landlord. At the tenant''s suit brought against the landlord for possession during the subsistency of the lease, it was held that the

encroachment was for the benefit of the landlord and not for the exclusive benefit of the tenant, and had become added to demised premises. In

Goordas Roy v. Issur Chandra Bose 22 W. R. 246 (1874) the landlord instituted a suit for assessment of rent on lands not originally included in:

the tenancy but encroached upon, the lands being his own khas lands. His claim was allowed on the principle that the lands must be taken as

added to his tenure. In such a case, e.g., where the encroached lands are the khas lands of the landlord, there is a divergence of opinion as to

whether the encroached lands form a separate tenancy or become a part and parcel of the original tenancy. Banerjee and Stevens, JJ., expressed

the opinion that they would form a separate tenancy and the landlord''s right to assess rent on them would be based not on sec. 52 of the Bengal

Tenancy Act but on general principles. [Khondkar Abdul Hamid v. Mohini Kanta 4 C. W. N. 508 (1900). Sharfuddin and Coxe, JJ., followed

Khondkar Abdul Hamid''s case 4 C. W. N. 508 (1900) with great reluctance [Abdul Hakim v. Rajendra Narayan 13 C. W. N. 635 (1909)]. But

there is no case in which the landlord''s claim for additional rent has been allowed when the encroached lands belong not to him, but to other

persons. According to well-established principles, the moment the tenant encroached upon the lands of persons other than of his landlord, the

encroachment enures to the ultimate benefit of the landlord. If his lease determines by efflux of time or is determined by forfeiture before twelve

years of the date of such encroachment, his landlord would get possession of the encroached lands, but to allow him in such a case to have

additional rent assessed from the date of the encroachment and while the term of the lease is subsisting, would lead to anomalous positions as has

been pointed out by Mr. Justice B.B. Ghose in Jatindra Nath Choudhuri and Others Vs. Trailakaya Nath Das, . In the last-mentioned case it is not

quite clear whether the tenant had acquired a title by adverse possession against the owner of the encroached lands at the date of the landlord''s

suit for additional rent, but from the facts, seeing that the owner was the Secretary of State, it may be assumed that he had not. But on principle, in

my judgment, there can be no distinction between the case where the tenant''s title has been perfected by adverse possession; for the requisite

period of time and where not, although some of the reasons of that learned Judge would not apply to the case where such possession had ripened

to a perfected title. If the land lord has the right to impose additional rent, it can only be on the principle that the encroachment enures to his benefit

from the moment of the encroachment. I think that the true principle has been formulated in Woodfall''s Law of Landlord and Tenant, page 933

(23rd Edition). The learned author says, ""Encroachments made by a tenant from adjoining waste during the term are prima facie for the benefit of

the tenant during the term and thereafter of his landlord."" This principle I think ought to apply to the case where the encroachment is not on the

landlord''s khas lands but on lands belonging to other owners. The cases of encroachment on the landlord''s khas lands stand on a different

principle. He has the option there to treat him as a trespasser in respect of those lands and recover possession or treat him as his tenant and on that

footing proceed to assess rent.

6. I accordingly decree] the appeal in part. The Plaintiff''s claim for additional rent for the lands found to be outside estate No. 3846 will stand

dismissed. The Appellant will have his costs of this appeal. The parties will have costs of the lower Courts in proportion to their success. Leave to

appeal under the Letters Patent asked for is granted.