(1910) 11 CAL CK 0007

Calcutta High Court

Case No: None

Dina Nath Das and Others		APPELLANT
	Vs	
Ganesh Chandra Saha and Others		RESPONDENT

Date of Decision: Nov. 30, 1910

Citation: 9 Ind. Cas. 2

Hon'ble Judges: Caspersz, J

Bench: Single Bench

Judgement

Caspersz, J.

The land involved in this litigation is a doba or ditch covered by dag 707. The plaintiffs sought to recover possession of the doba on the allegation that it was their khas patit land. The defendant, on the other hand, set up a jote right in respect of that plot, and asserted that they held their tenancy under the plaintiffs for which they paid rent, at first, Rs. 4-2 which was subsequently increased to Rs. 4-8, the 6 annas representing the rent of the plot added to the original area of the holding. There was a previous rent suit between the parties in which the plaintiffs sought to recover rent at the original jama of Rs. 4-2, and that suit was decreed at that rate, but there is a concluding observation in the judgment of the appellate Court that the question of land appertaining to the holding will be left open.

2. The principal piece of evidence on the side of the defendants, then, as now, is Exhibit B, a dakhila (rent receipt) purporting to have been granted by the plaintiff''s son in which plot No. 7 was specified among other plots. The first Court thought the dakhila to be not genuine and refrained from deciding the further question, namely, whether the dakhila is binding on the plaintiff. The Munsif decreed the plaintiff''s suit, but the Subordinate Judge has reversed that decision.

3. In second appeal, the contentions are three in number, first, that the Subordinate Judge has wrongly thrown the onus on the plaintiff, and that he is in error in saying that there was no evidence on the plaintiff''s side on the question of parcel or no

parcel; secondly, that the previous decision inter partes is, virtually, res judicata in the questions whether the plot No. 707 formed part of the defendants'' tenancy; and, thirdly, that the Subordinate Judge has not decided whether the receipt, if genuine, was binding on the plaintiffs.

4. With regard to the first contention, it is argued that the facts of this case differentiate it from Rajendra Kumar Bose v. Mohun Chandra Ghosh (I) and my attention has been called to the decision in Nanda Lal Goswami v. Jajneswar Buldar 6 C.W.N. 105 which distinguishes the decision first cited. Reference has also been made to the case of Narsing Narain Singh v. Dharam Thakur 9 C.W.N. 144. These cases were considered by this Court in a decision to which I was a party--Baraik Kamat Sahi v. Lilhu Christian 8 C.L.J. 170--and in the circumstances of that case, it was held that the onus lay on the defendants to prove their occupancy right. I think that when the relation of landlord and tenant is admitted, and has been proved between the parties to the present litigation, any further questions as to the jama and area held by the defendants under the landlords do not refer to the status of tenancy but rather to the contract between landlord and tenant. The relation of landlord and tenant exists, whatever may be the precise area of land in respect of which, it is continued--whether it be more land at one period of time or, at another, less land. That does not affect the relationship existing which involves the obligation to pay rent. The further question, therefore, as to whether plot No. 707 is part of the defendants'' tenancy ought to be decided on the general principles laid down in Rajendra Kumar Bose v. Mohun Chandra Ghosh 3 C.W.N. 763. The ordinary rule is that the plaintiff must establish his own case and make it strong in order to disturb possession of a long duration. It has been found in the present case that the defendants are in possession of this plot. They are willing to pay rent for the same, and it lies on the plaintiffs to show that the land is not raiyati but khas patit. I am not quite sure what the Subordinate Judge meant by saying that there is no evidence on the plaintiffs'' side; but I apprehend his remark was on the question of parcel or no parcel. The evidence was in favour of the defendant''s case: and the principal item of evidence, which I have already mentioned, was the rent receipt (Exhibit B), and that, of course, was produced by the defendants. I accordingly overrule the first contention raised on behalf of the plaintiffs-appellants.

5. On the second contention of res judicata, I observe that it is put somewhat differently in the grounds of appeal, but, taking it to be that the present suit is concluded by the finding in the plaintiffs'' rent suit, I do not think that any effect can be given to such a contention. I have already said that the question as to the land of plot No. 707 being part of defendants'' jote was left open in the judgment of the appellate Court. That is the precise point which has now come up for final adjudication. As was observed in the case of Dwarka Nath Roy v. Ram Chandra Aich 26 C. 428 : 3 C.W.N. 266, by Sir Francis Maclean, Chief Justice: "The issue determined in the previous suit (a rent suit) was, whether the relation of landlord and tenant existed at the time when that suit was instituted between the present plaintiff and

the then defendant, and whether the then defendant was liable for the amount then claimed as rent. That issue was decided against the present plaintiff...and that question must be treated as res judicata as against the plaintiff and in the defendants'' favour. But the relief sought in the present suit is absolutely different from the relief sought in the previous suit. The present issue is whether the land in dispute belongs to the plaintiff." I have already explained that the question, as to the inclusion or otherwise of plot No. 707 within the holding, is not one affecting the relation of landlord and tenant. The decision of the Full Bench I have quoted is opposed to the contention of res judicata now raised and I follow it in the present case. The second contention is accordingly negatived.

6. With regard to the third and last contention, that the Subordinate Judge did not go into the question whether Exhibit B is binding, having been given by the son of plaintiff No. 1, I have carefully considered whether it is necessary to send back this case for the lower appellate Court to record a finding on that point. But on consideration, I think it is not necessary. It has been common ground between the parties to this litigation that the plaintiff''s son collected rent and granted receipts. It has been found by the Subordinate Judge, on examination of the receipts, and on the evidence of a certain doctor, that Exhibit B is perfectly genuine, and inasmuch as plot No. 707 is included within that dakhila, I think the plaintiffs must be deemed to have failed to make out any exclusive title to that plot as forming part of their khas patit land.

7. In these circumstances, this appeal fails and is dismissed with costs.