(1922) 03 CAL CK 0036

Calcutta High Court

Case No: F.A. No. 144 of 1919

Midnapore Zamindary Co. Ltd.	APPELLANT
Vs	
Naresh, Narayan Roy	RESPONDENT

Date of Decision: March 2, 1922

Final Decision: Dismissed

Judgement

Mookerjee, J.

The subject matter of the litigation which has culminated in this appeal is a tract of land, of 1,700 bighas in area, formed by the recession of the river Padma. The case for the plaintiff was that the disputed land was reformation in situ of an estate wherein he had a share of 5 annas 16 gundas 2 haras and 2 krant, He alleged that although his title to the property was declared in a previous litigation and he was placed in possession in execution of the decree made therein, he was subsequently dispossessed by virtue of an order made u/s 145 of the Criminal Procedure Code. He consequently asked for declaration of his title as well as a decree for possession and mesne profits.

2. The contesting; defendants resisted the claim on a variety of grounds, namely, first, that the Court had no jurisdiction over the subject-matter of the litigation; secondly, that whatever the title of the plaintiff might be, he could have no cause of action till the expiry of the settlement already obtained by the defendants from the Revenue authorities; thirdly, that the suit was barred by limitation; fourthly, that no partition could be effected by the Civil Court, and fifthly, that in any event, the plaintiff was not entitled to a decree for mesne profits inasmuch as the defendants did not exceed their rights as coparceners.

3. The Subordinate Judge overruled these contentions and gave the plaintiff a decree for possession and mesne profits.

4. On the present appeal, the decree of the Subordinate Judge has been assailed on five grounds; viz., first, that the trial Court had no jurisdiction over the

subject-matter of the litigation; secondly, that as the plaintiff had not obtained settlement from the Revenue authorities, he had no enforceable cause of action; thirdly, that the claim was barred under Art. 45 of the schedule to the Indian Limitation Act inasmuch as it had not been instituted within three years from the date of last settlement with the defendants; fourthly, that in view of the nature of the property no partition thereof could be effected by the Civil Court; and fifthly, that no decree for mesne profits could be made in favour of the plaintiff. In our opinion, none of these contentions can be sustained.

5. As regards the first point, it appears that on the 10th March 1876 a notification was issued by the Government of Bengal which defined the river Padma as the boundary between the districts of Rajshahi and Nadia. The ease for the plaintiff is that at the date of the institution of the suit, i.e., on the 22nd March 1916, the disputed property lay towards the north of the main channel of the Padma and was consequently within the jurisdiction of the district Court at Rajshahi. The case for the contesting defendants on the other hand is that the prorerty lay towards the south of the main channel and was consequently within that jurisdiction of the district Court at Nadia. The Subordinate Judge has found that although the property lay towards the south of one of the channels of the Padma, that channel was not the main but only a subsidiary channel and that consequently the trial Court had jurisdiction over the subject-matter of the litigation. No materials have been placed before us to show that the conclusion of the Court below was in fact erroneous. Indeed, as no map has been prepared in this case, it is impossible for us to say whether the channel which lay towards the north of the disputed land was the main channel or a subsidiary channel of the river. We are, therefore, not in a position to dissent from the view taken by the Subordinate Judge. It may further be observed that in view of the provisions of sections 18 and 21 of the Civil Procedure Code, the contention of the defendants cannot possibly prevail; even if it be assumed that it is doubtful whether the property lay within the jurisdiction of the Rajshahi Court or the Nadia Court the decree of the Subordinate Judge cannot be set aside, as it has been neither suggested nor established that there has been a failure of justice. The first contention must consequently be overruled.

6. As regards the second point, it is based on the assumption that the plaintiff can have no enforceable cause of action till he obtains a settlement of the disputed land from the Revenue authorities. There is, in our opinion, no foundation for this argument. In 1899, a suit was instituted by the plaintiff against the defendants as also the Secretary of State for India in Council, for declaration of his title to the disputed property and for recovery of possession with mesne profits. At that time, the property was under settlement with the contesting defendants for a term of 10 years which had commenced in 1894, and was to terminate in 4904. Notwithstanding the fact that the plaintiff at that time had no settlement from the Revenue authorities, he was awarded a decree by the Subordinate Judge for declaration of title as also for recovery of possession with mesne profits. That

decree was ultimately confirmed by this Court, subject to variation in one respect not material for the purpose of the present litigation. The view then taken was unquestionably right and at any rate cannot be challenged in this suit between the same parties. After the expiry of the settlement then current, there were two successive annual settlements with the defendants followed by a quinquennial settlement in 1906 which was to expire in 1911, and this was followed by a settlement for 10 years, to expire on 31st March 1921. In our opinion, the plaintiff had an enforceable cause of action, even though at the date of the institution of the suit he had no settlement from the Revenue authorities. This view is supported by a principle enunciated by the Judicial Committee in a well known case which was heard by them on two occasions, Maharaja Rajendar Pertab Sahee v. Lalljee Sahee (1873) 20 W.R. 427 = 2 Suth. P.C.R. 910 and (1879) L.R. 6 I.A. 211 (Privy Council) . On the second occasion, Sir Barnes Peacock pointed out that the nature of the title to a property is not affected by the circumstance that it is held from the Crown under a periodical settlement, and that although the amount of the revenue payable to the Crown may be periodically varied in view of the varying quantity and quality of the land, the nature of the title thereto remains unaffected. In the case before us, the property is claimed by the plaintiff as reformation in situ of an estate held by him under the Government. This title was established in the litigation of 1899 in the presence not only of the Secretary of State but also of the present contesting defendants. It is worthy of notice that in that litigation, the plaintiff obtained possession and mesne profits. The decree made by the Court on the 13th December 1906 was subsequently executed and the plaintiff was placed in possession on the 15th June 1907. Thereafter the plaintiff was dispossessed on the 31st March 1913 by virtue of an order under sec. 145, Criminal Procedure Code, which held in substance that the defendants and their tenants were in occupation of the disputed tract. It is unquestionably open to the plaintiff to maintain this suit and to seek recovery of possession as he did in the previous litigation. The second contention of the defendants must consequently be overruled.

7. As regards the third point, it has been urged that the suit is barred under Art. 45 of the Schedule to the Limitation Act, inasmuch as it has not been instituted within 3 years from the date of the last settlement with the defendants. There is no force in this contention, as the object of the suit is not to set aside an award made by the Revenue authorities.

8. This is a suit to recover possession, and if the plaintiff succeeds, the settlement made by the Revenue authorities, in so far as it determines the amount of revenue payable in respect of the disputed property by the holder thereof will in no way be affected. The substance of the matter is that the plaintiff seeks to obtain the benefit of the settlement obtained by the defendants, notwithstanding the decision in the previous litigation. The decision in Abdul Kadir v. Hamid Meah (1908) 12 C.W.N. 910 has no application, as this is not a suit to set aside an order of the Revenue authorities refusing to make a settlement of khas mehal lands with the plaintiff.

There is, therefore, no force in the contention that the suit is barred by limitation.

9. As regards the fourth point, it has been urged that in view of the nature of the property, partition thereof cannot be effected by a Civil Court and in support of this contention reference has been made to the decision of this Court in Bepinbehary Mitter v. Lala Bhugwat Sahai (1905) 9 C.W.N. 699 which is clearly distinguishable. In the present case, as already stated, the title of the plaintiff has not been made precarious by virtue of the periodical settlement for the assessment of revenue made by the Revenue authorities with defendant, consequently there is nothing in the nature of the property which makes it impossible for partition by the Civil Court and the case is governed by the decision of the Full Bench in Hemadri v. Ramani (1897) 24 Cal 575 = 1 C.W.N. 406. The fourth contention accordingly fails.

10. As regards the fifth point, the contention is that the plaintiff, should not have been allowed a decree for mesne profits, inasmuch as he has not been ousted by the defendants. The Subordinate Judge has dealt with this matter at full length. He has pointed out that the defendants are in exclusive possession of the property through their tenants and that the effect of the order u/s 145, Criminal Procedure Code has been to dispossess the plaintiff. There can be no question, that since the date of that order the defendants have been in exclusive possession. This is also in accord with the attitude taken up by the defendants throughout this litigation, for they have strenuously maintained, even up to this Court, that plaintiff is not entitled to possession till after the expiry of the current term of the settlement with them. We are of opinion that the Subordinate Judge has rightly allowed the plaintiff mesne profits.

11. As all the contentions urged by the appellants fail, appeal must be dismissed with costs including the reserved costs.