
(1869) 01 CAL CK 0015

Calcutta High Court

Case No: Special Appeal No. 154 of 1868

Madhab Kaibarta

APPELLANT

Vs

Bir Chandra Jubaraj
Goswami

RESPONDENT

Date of Decision: Jan. 8, 1869

Judgement

Bayley, J.

The real contention in this special appeal is that whereas a Civil Court has already decreed the lands, the rents of which form the subject of the plaintiff's suit, to the intervenor, the plaintiff could not sue as in actual receipt of the rents, bond fide, with reference to the terms of Section 77 of Act X of 1859, as he would thus render inoperative a Civil Court decree. The plaintiff sued the defendant in this case, for arrears of rent, alleging that the lands appertained to the plaintiff's property, Surail.

2. The Maharaja (appellant) intervened, alleging that the lands did not belong to the plaintiff's talook, but to his (the Maharaja's) property, Nurnagar.

3. It is clear from the proceedings of the Court, and from the state of pleadings on the record before us, that if the lands be found to be in the plaintiff's estate of Surail, the intervenor (Maharaja) has no claim under the Civil Court decree. On the other hand, if the lands are found to be within the Maharaja's estate of Nurnagar, the plaintiff has no claim to the rents of such lands. The first Court has clearly found, as a fact, that the lands for the rents of which the plaintiff sues, belong to the Maharaja's estate of Nurnagar.

4. The lower Appellate Court comes to no decision upon the correctness of this finding of the first Court, but remands the case to the Deputy Collector, with an order that the latter should "satisfy himself as to whether the relationship of landlord and tenant exists between the parties, and after taking such "evidence as plaintiff was ready to produce, decide the case on its merits and "with reference to the above remarks."

5. Without going further into the facts and pleadings in this particular case, I am of opinion that the ground taken by the special appellant is good and valid, because both the parties admit in their pleadings that if the lands belonged to the plaintiff's estate, the plaintiff was in actual and bond fide receipt of the rents; and if they belonged to the intervenor's estate, the intervenor (Maharaja) was in actual and bond fide receipt of the rents. It was certainly, therefore, essential that there should be a proper finding by the lower Appellate Court as to who was in actual receipt and enjoyment of the rents bond fide, i.e., it was essential for the lower Appellate Court to decide whether the first Court was right in finding the lands to be decreed by the Civil Court to the Maharaja as his lands of Nurnagar or not.

6. The case ought, accordingly, to be remanded to the lower Appellate Court, in order that it may clearly find whether, according to the allegations of the parties respectively, the lands appertained to the plaintiff's estate, Surail; or to the defendants, Nurnagar; and according to the finding decide as to whether the actual receipt and enjoyment of the rents bond fide is with the one party, or the other.

Hobhouse, J.

7. I agree that this case must be remanded, but I think it better to state separately the reasons upon which I have arrived at that judgment.

8. The plaintiff sued for arrears of rent of Pergunna Surail. The intervenor claimed to be heard u/s 77, alleging that he was in actual receipt and enjoyment of the rents as proprietor of Pergunna Nurnagar, and stated that the particular lands in dispute were covered by a decree of the Civil Court, dated the 20th April, 1866, by which it was declared that the lands were part of his estate Mauza Nurnagar.

9. The plaintiff's agent was then asked by the Court as to whether this fact was so or not, and he denied that it was so.

10. The intervenor then asked for a local investigation in the matter, and such investigation was granted. It seems to me to follow from the contentions on either side, that both parties were agreed that the question as to the actual receipt and enjoyment of the rents by the intervenor should depend upon the result of the investigation as to whether the lands were covered by the decree of 20th April 1866. If they were so covered by that decree, then it was conceded that the intervenor was the person in actual receipt and enjoyment of the rents; if not, he was not such person; and the only question then remaining would be a question between the plaintiff and the ryots (defendants). In this view of the case, I think that the first Court had jurisdiction to determine, and was right in determining as a matter of fact, as to whether the lands were covered by the decree of the 20th April 1866, and I also think that the lower Appellate Court was wrong in not determining the same fact. I would, therefore, remand the case in order to have the point determined. If it should be found that the lands are covered by the decree, then the

plaintiff's suit must be dismissed; if not, the only question still remaining will be a question as between the plaintiff and ryots (defendants). Costs will follow the event.