Rajkrishna Mookerjee Vs Parbati Charan Mookerjee

Court: Calcutta High Court

Date of Decision: Feb. 22, 1865

Judgement

Sir Barnes Peacock, Kt., C.J.
The plaintiff in this suit, which was commenced on the 31st December 1861, alleges that he is a dar-

patnidar; that there is a certain quantity of land, part of his ""mal"" land, held by the defendant under the false pretence that it is lakhiraj; and that the

lakhiraj was created in the time of a former talookdar by fraud. The defendant pleads that the suit is barred by the Statute of Limitation, and the

first question we now have to decide is whether or not it is so barred, assuming that the grant was subsequent to the 1st December 1790. If the

case is one falling within section 10, Regulation XIX of 1793, we are of opinion that the suit is not barred. Section 10 enacted that ""all grants for

holding land exempt from the payment of revenue, whether exceeding or under one hundred bighas, that have been made since the 1st December

1790, or that may hereafter be made by any other authority than that of the Governor-General in Council, are declared null and void, and no length

of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it. And

every person who now possesses, or may succeed to the proprietary right in any estate or dependant talook, or who now holds, or may hereafter

hold, any estate or dependant talook in farm of Government or of the proprietor, or any other person, and every officer of Government appointed

to make the collections from any estate or talook held khas, is authorized and required to collect the rents from such lands at the rates of the

pergunna, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or talook in which it may be situated,

without making previous application to a Court of Judicature."" That is how the law stood prior to Act X of 1859; but by section 28 of Act X of

1859, it was enacted that ""so much of section 10 of Regulation XIX of 1793 as authorizes and requires proprietors and farmers of estates and

dependant talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the date specified

in the said section, of their own authority to collect the rents of such land, and to dispossess the grantees of the proprietary right in the land, and to

re-annex it to the estate or talook in which it may be situated is repealed; and any proprietor or farmer who may desire to assess any such land, or

to dispossess any such grantee, shall make application to the Collector, and such application shall he dealt with as a suit under the provisions of this

Act.

2. A case was referred to a Full Bench to consider whether the effect of section 28 was to deprive the party of the right which he had u/s 10,

Regulation XIX of 1793, of proceeding in the ordinary Courts of Civil Justice. The Court held in that case that, although the party had a right to

proceed u/s 28, Act X of 1859, it did not deprive him of the right which he previously had of enforcing it in the regular Court of Justice,

notwithstanding the words ""and any proprietor or farmer who may desire to assess any such land, or to dispossess any such grantee, shall make

application to the Collector, &c."" This Court, without expressing any opinion as to the correctness of that decision, hold that they are bound by it,

and that it was authoritatively settled that a party has a right to proceed in the ordinary Civil Courts to enforce his right u/s 10, as if section 28 had

never been passed Sonatan, Ghose v. Moulvi Abdul Farar, ante, p. 109.

3. But the question still remains to be decided, whether proceedings instituted before the 31st December 1861 (that is to say, before the last Law

of Limitation came into operation) in the ordinary Courts of Justice, to enforce a right u/s 10, Regulation XIX of 1793, are barred by limitation, if

the invalid lakhiraj be proved to have been made since the 1st December 1790. There was a course of decision in the late Sudder Court, that the

words ""no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil, or the

rents of it,"" excluded limitation, when a suit was brought to get rid of a grant subsequent to the 1st December 1790.

4. As a Full Bench has decided that an action still lies in the ordinary Courts to enforce rights u/s 10, it must be considered whether the law, as laid

down in those decisions, has been altered by the provisions of section 28, Act X of 1859. The latter part of section 28 is referred to. It enacts that

every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or

dispossess the grantee, or of some persons claiming under him, first accrued. If such period has already elapsed, or will elapse within two years

from the date of the passing of this Act, such suit may be brought at any time within two years from such date.

5. The Court are of opinion that those words apply only to new suits brought u/s 28, and that they do not alter the limitation with regard to a suit

instituted in the ordinary Courts of Civil Justice.

6. The effect of section 28, as construed by the decision of the Full Bench, merely takes away the right of proprietors to act of their own authority,

and compels them in the place of so acting to make application to the Collector. The old right of suit in the Civil Courts still remains, and there is

nothing in section 28 to repeal or alter that part of section 10 of Regulation XIX of 1793 which declares that ""no length of possession shall be

hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it.

7. Section 10, however, applies only to grants made since the 1st December 1790, and it must, therefore, he decided on whom the ""onus pro-

bandi"" lies,--whether it is upon the plaintiff to prove that the case is one falling within section 10, or in other words that the grant was made since

the 1st December 1790, or upon the defendant to show that he holds under a valid grant. Both of the lower Courts held that the onus was upon

the defendant. If the Court below are right, then the defendant not having given any evidence in the case, the appeal must be decided against him.

If, on the other hand, the Court is satisfied that the onus is on the plaintiff to prove that the grant was subsequent to the 1st December 1790, the

case must be remanded, in order that the plaintiff may adduce evidence.

8. We are of opinion that the plaintiff must prove that the case is one falling within section 10 of Regulation XIX of 1793, so as to show that it is

excluded from the Law of limitation by the words to which we have referred, ""and no length of possession shall he hereafter considered to give

validity to any such grants, &c."" He must prove his allegation that the land held by the defendant, and which he claims to be lakhiraj, is part of the

mal land of the plaintiff; if he prove that fact and show that it was assessed to the public revenue at the time of the Decennial Settlement, it may be

presumed that the right under which the defendant claims to hold as lakhiraj commenced subsequently to the 1st December 1790, unless the

defendant gives satisfactory evidence to the contrary. We think that the lower Courts were wrong in holding that the onus was upon the defendant.

The case must, therefore, be remanded to the first Court to he re-tried with reference to the opinion above expressed. If the plaintiff fail to give the

necessary proofs, the third issue as to limitation must be found for the defendant, and judgment must be given for him.