(1872) 06 CAL CK 0009

Calcutta High Court

Case No: Appeal No. 1 of 1872 in Special Appeal No. 728 of 1871

Rani Durga Sundabi Dasi		APPELLANT
	Vs	
Bibi Umdatan Nissa		RESPONDENT

Date of Decision: June 25, 1872

Judgement

Sir Richard Couch, Kt. C.J.

1. This suit was brought in the Court of the Deputy Collector of Jessore under cl. 4, s. 23 of Act X of 1859, for arrears of rent at an enhanced rate, of land held by the defendant in the Jessore Bazar. The land was occupied by a building, which was admitted to be the property of the defendant, and no part of the rent claimed was alleged to be due on account of the building. When, or under what circumstances, the building was erected does not appear. The Deputy Collector made a decree for rent at an enhanced rate, which was reversed by the Officiating Judge of Jessore on the ground that the suit should not have been brought under Act X of 1859. He seems to have considered it as a suit for the rent of a house which it was not, but possibly he may have, meant the rent of the land upon which the house stood. On special appeal to this Court the learned Judges by whom the case was heard were divided in opinion,--Glover, J., holding that the rent of land used for building purposes cannot be enhanced by a suit under Act X of 1859, and Mitter, J., holding that a suit for arrears of rent of land, although it was occupied by a building, was within cl. 4 of 8. 23; apparently assuming that if a suit for rent would lie a suit for enhanced rent would. And if by land in that clause is meant land occupied by a building. I do not see how the conclusion that a suit for a higher or enhanced root of such land may be brought it the Collector''s Court can be avoided. The erection of a building upon the land with the consent of the landlord does not give to the occupant a right to hold the land perpetually at the same rent. If his rent was liable to be raised before, it would be so still, unless the circumstances amounted to an implied contract on the landlord''s part that he should always hold at the same rent, or, in fact, to the grant of a perpetual tenancy at a fixed rent, which would be determined by the Court in a suit between them. If, as Mitter, J., thinks, s. 6 of Act X applies, and a ryot holding such land

for twelve years has a right of occupancy, s. 17 must also apply so far as the ground for enhancement can be made applicable. But I think that in determining what is the meaning of "land" and "holding land" in Act, X we must look at all the provisions of the Act. It may be assumed that it was not intended that one part of it should apply to one kind of land and another part to another, and that land in ft. 23 should have a different meaning from what it has in other sections. The Deputy Collector says with truth that it is extremely difficult to apply to bazar lands occupied merely as building ground the provisions of s. 17, which are manifestly intended to be applied to the rent of lands used for agricultural purposes. And these are not the only provisions in the Act of which that may be said. S. 112 and the following sections can only apply to land used for cultivation. The intention of the Legislature is to be deduced from the whole Act, and a construction which makes the whole of it consistent is to be preferred. I think this is the ground of the decisions in this Court that lauds used for building purposes are not liable to enhancement under Act X. And when we consider that a right of occupancy of laud used for building purposes at a permanent rent may depend in some cases upon the terms of the original letting or upon equities arising out of the landlord''s conduct, the suit for a higher or enhanced rent seems to be properly cognizable in the ordinary Civil Courts. I therefore think the decree should he confirmed.

2. Ainslir J.--I concur.

Bayley, J.--I am of opinion that the suit for enhancement tinder the circumstances of this case will not lie under Act X. of 1859, and the current of decision is to that effect.

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[1] Before Mr. Justice Kemp and Mr. Justice Glover.

Khairuddin Ahmed and Others (Plaintiff''s) v. Abdul Baki (Defendants)."

Special Appeal, No. 2973 of 1868, from a decree of the Additional Judge of Tirboot, dated the 22nd July 1858, affirming a decree of the Assistant Collector of, that district, dated the 1st October 1867

The 30th April 1869.

Mr. C. Gregory for the appellant.

Moonshee Mahomed Busuff for the respondent.

Glover, J.--This was a suit for enhancement of rent after notice.

Both the plaintiff and defendant are co-sharers in the same village. In 1848,-a between was effected, by which the defendant''s dwelling house was included in the plaintiffs share of the village, and the Collector, under the provisions of s. 9, Regulation XIX of 1814, directed that this, together with seven bigas of Adjacent land, should be retained by the defendant on his paying the plaintiff a yearly rent of three rupees a biga, and this

arrangement was duly entered in the batwara paper. The plaintiff now seeks to enhance this rate of three rupees a biga up to six rupees, the usual rate, on this ground (amongst others) that the Regulation only refers to land immediately adjacent to a house and not to large fields which are moreover cultivated by the defendant as a ryot. The Assistant Collector thought that the plaintiff was entitled to enhance but gave no decree, holding that the Revenue Courts bad no jurisdiction. The Judge, on appeal, thought that the case was cognizable by the Collector but that the rate fixed by the Collector on the batwara proceedings was con-elusive as far as the Revenue Courts were concerned.

The point taken in special appeal is that the batwara proceeding is no bar to enhancement; that the lands then given by the Collector did not come under the definition of s. 9 of the batwara law; and that, if they did, the utmost the Collector did, and could do, was to fix what was then an equitable rent, and that it did not follow that what was equitable then was equitable now.

For the special respondent, it was contended that the Revenue Courts had no Jurisdiction as had been found by both the lower Courts, and that there was no need to go into the question as to whether the batwara order was a final one or no.

It appears to me that this is a valid objection, so far as regards the want of Jurisdiction. I do not, however, understand the Additional Judge case on this ground, for in one part of his decision he says, "the claim is entirely for ground-rent, and therefore within the cognizance of the Collector."

I take his meaning to be that although the Collector had jurisdiction, still the between proceeding most be assumed to have been correct, and to be a sort of bar to the plaintiff"s claim to enhance admit, however, that there are some ports of his judgment which seen to mean that, as the land in suit was immediately attached to the defendant"s house the rent fixed by the Collector, under s. 9. Regulation XIX of 1814, was in the nature of house-rent, and not recoverable under Act X of 1859. But, whatever his real meaning may be, I take it that there is no jurisdiction in the Revenue Courts to try a case like this. There can be no doubt indeed the batwara papers show this very clearly) that the Collector gave the seven bigas of land to the defendant as an appendage to his, dwelling-home which appears to have comprised a considerations block of buildings, including a mosque. Whether or not the grant was excessive for the purpose is a question with which we have nothing to do now. It is enough that the Collector was authorized under the batwara law to give such land as he thought proper to consider "attached" to the defendant"s homeland as an appurtenance to that homestead; and it seems to me, therefore, that the rent fixed on that land must be considered as the rent of the homestead--of the house and grounds as it would be called in England--and that such rent could not be the subject of a suit under Act X of 1859, the proper forum would be the Civil Court.

For these reasons, I think that this special appeal should be dismissed with costs.

Kemp, J.--I concur in this Judgment. It appears to me that the land is immediately attached to the house of the defendant, special respondent, "forming as it were one compound or act of Premises"--Bipro Doss Dey v. Wollen 1 W. R. 222.

The suit ought to have been brought in the Civil Court.