

(1878) 05 CAL CK 0016

Calcutta High Court

Case No: None

Hurro Proshad Roy

APPELLANT

Vs

Gopaul Dass Dutt and
Others

RESPONDENT

Date of Decision: May 16, 1878

Citation: (1878) ILR (Cal) 818

Hon'ble Judges: Richard Garth, C.J; McDonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The only question in this appeal is that of limitation; and, in order to the proper solution of that question, having regard to the authorities to which our attention has been called it is necessary to state the facts with some precision.

2. The suit is brought to recover arrears of rents of certain chukdari tenures from the years 1272 to 1279.

3. These tenures are within the limits of Talook Kassinugger, which originally belonged to the defendants' ancestors; but as they failed to pay the Government revenue, the talook was sold in the year 1838 under Reg. XI of 1822, and purchased by the Government.

4. In 1841 the defendants took a farming lease of it for five years in the name of one Bissonath Dey.

5. In 1846 that lease was renewed for another twenty years, so that the defendants held the talook in ijara up to 1866.

6. Meanwhile, in 1860, the Government sold its proprietary right in the talook to the plaintiff's father, who afterwards died, leaving the plaintiff his heir; and on the expiration of the ijara lease in 1866, the plaintiff endeavoured to take khas possession of the entire talook from the defendants.

7. The defendants, however, set up certain chukdari tenures extending over a larger portion of the lands of the talook; whereupon the plaintiff in the year 1874 brought a suit to recover khas possession of those lands. The defendants pleaded their chukdari rights; and the District Judge, though he decided the question as to those rights against the defendants, decreed the suit in their favour on the plea of limitation.

8. On appeal, however, the High Court found against the plaintiff upon both points, considering that the evidence established the fact of the existence of the chukdari tenures, it having been proved satisfactorily that before the purchase of the Government rights by the plaintiff's father, the defendants had paid rent for those tenures to the Government, for which they produced receipts signed by the Collector.

9. The effect of this finding was of course that the plaintiff was not entitled to dispossess the defendants of the lands in question, and that the defendants were held to be tenants to the plaintiff of those lands.

10. The plaintiff then asked leave of this Court to appeal to the Privy Council, which was refused; but afterwards upon a direct application to the Privy Council he obtained leave, and the case is now pending in that Court.

11. Meanwhile, upon the basis of the judgment of the High Court, the plaintiff brought this present suit against the defendants to recover the back rents of the chukdari tenures from the years 1866 to 1872.

12. It is admitted that the last rent thus claimed accrued due in 1872, more than three years before this suit was brought in 1876; but then it is said, that the principle of the case of *Ranee Surnomoyee v. Sooshee Mookhee Burmonia* 11 W.R.P.C. 5 applies here, and that the cause of suit for these rents did not accrue to the plaintiff until the High Court delivered their judgment in the former suit in the year 1876, confirming the existence of the chukdari tenures.

13. Our attention has been called by Mr. Bose to several cases in this Court to which the ruling of the Privy Council has been applied; and it has been argued that, although the facts of this case may not quite resemble those of the case of *Ranee Surnomoyee*, this Court has extended the principle of that case, so as to make it applicable to the present.

14. The Subordinate Judge has held that the principle of that case is not applicable to the present, and we quite agree with him.

15. In *Surnomoyee's* case a patni was sold for arrears of rent under Act VIII of 1819. This sale was afterwards set aside for irregularity, and the patnidar was restored to possession. The zemindar then sued the patnidar to receive the back rents, and the patnidar pleaded that the suit was barred. The High Court here considered that it was so, but the Privy Council held otherwise, because until the patnidar had

recovered possession of the patni the zemindar could not possibly have sued him for the rent. In fact, no rent became due as long as the patnidar was ousted of his rights; but it was only equitable that when those rights were restored to him, he should regain them only subject to the obligation to pay the back rents to the zemindar.

16. So again, in the case of *Dindyal Paramanik v. Radhakishori Debi* 8 B.L.R. 536 decided by Chief Justice Couch and Mr. Justice Jackson in this Court, the plaintiff sued the defendant in the year 1872 to recover the rent due for the year 1871, and, to eject him for non-payment. The litigation lasted till 1876 when, the plaintiff obtained a decree for the rent, and also for ejecting the defendant if the rent was not paid within fifteen days. It depended entirely upon the defendant himself whether he paid the rent so decreed or not. If he did not, his tenancy, in the opinion of the Court, would have ceased as from the time when the suit was brought. If he did, then the payment had the effect of restoring the tenancy.

17. Under these circumstances, the landlord sued in 1876 for the rent of 1872, and it was held that he was not barred, because until the defendant paid the rent, and so restored to himself the tenancy, the plaintiff had no cause of action for the back rent.

18. In the case decided by Mr. Justice Jackson and Mr. Justice Mookerjee 16 W.R. 79, it does not appear what the facts were; but from the language of the learned Judges, they certainly seemed to consider that the case came strictly within the principle laid down by the Privy Council.

19. In *Mohesh Chunder Chakladar v. Gungamoni Dossee* 18 W.R. 59 decided by Mr. Justice Kemp and Mr. Justice Glover, we certainly have some difficulty in seeing how the Privy Council's decision could possibly have been made applicable; but the facts of that case are so totally dissimilar from those of the present that we do not feel at all bound by that judgment.

20. Most of these authorities are carefully considered by Mr. Justice Markby and Mr. Justice Mitter in the late case of *Watson and Co. v. Dhonendra Chunder Mookerjee* ILR Cal. 13 and we entirely agree with the view which the learned Judges there take of the judgment of the Privy Council.

21. The judgment, properly understood, is in our opinion wholly inapplicable to a case like the present.

22. Here the plaintiff, whose ancestor purchased the rights of Government in 1860, ought to have known, when the defendant's *ijara* came to an end in 1866, what his true position was as against the defendants. The defendants set up against him these *chukdari* tenures; and if the plaintiff had made proper enquiries, he might have ascertained whether those tenures really existed. But he chose to ignore them, and to sue the defendants improperly (as it has turned out) for khas possession of

the talook; and it is not because he has made a mistake, and by that mistake put the defendants to the cost and inconvenience of a long litigation, that he has a right now to claim immunity from the provisions of the Limitation Act.

23. If that were so any man who mistakes his proper rights and remedies might with equal justice claim exemption from those provisions.

24. Take the ordinary case of a landlord giving his ryot notice to quit, and at the expiration of that notice bringing a suit to eject him. The ryot sets up a right of occupancy; and the landlord, after a litigation extending over four or five years, is eventually defeated upon that ground: could the landlord under such circumstances sue to recover rent from the ryot which accrued due four years previously, and contend that he was not barred by time because he could not pursue his claim for rent and his claim for ejectment at the same time?

25. In our opinion, certainly not. Such a case would be entirely different from that decided by the Privy Council. If a landlord could recover back rents under such circumstances, he would be taking advantage of his own mistake to relieve himself from the law of limitation.

26. In this case the plaintiff ought to have known in 1866 what his true position was as against the defendants. Instead of treating them as tenants, and claiming from them the rents which they would probably have paid, he brought a suit against them for khas possession. Having failed in that suit, he is now trying to recover the rents as from 1866; we think he is clearly barred.

27. The appeal will be dismissed with costs, including the costs of the application for postponement of the hearing of the appeal.