
(1874) 03 CAL CK 0011

Calcutta High Court

Case No: Special Appeal No. 882 of 1873

Mahomed Israile

APPELLANT

Vs

Wise

RESPONDENT

Date of Decision: March 16, 1874

Judgement

Sir Richard Couch, Kt., C.J.

I think the first branch of the question must be answered in the affirmative. If we look at the scope and object of these Regulations, I do not see how it could be supposed that the decision in a suit for assessment would do any thing more than affect the question, whether the land was to be held rent-free or not. In determining that question between the owner or occupier of the land and the Government, it was not intended to determine any rights between parties who might have conflicting claims to hold the land. In *Hureeram Bukshee v. Ramchunder Banerjee S.D.D.*, 1850, 407 this appears to have been decided. The judgment there is:--"In this case the right of plaintiff as proprietor has been admitted by the Munsif, on proof of the foreclosure of the mortgage, previous to the purchase of the defendant, with whom the settlement was made by the Collector in virtue of his being in possession. Both Courts, however on the precedent of *Hur Gobind Ghose S.D.A. Sum. Dec.*, 131 have considered themselves restricted from interfering with any settlement made by the Revenue Authorities, and therefore dismissed plaintiff's claim. In this opinion both Courts have mistaken the decision in the precedent cited. It is therein recorded "to decide on the question of assessment is peculiarly the province of the Resumption Courts; to decide on the question of proprietary right is peculiarly the province of the Judicial Courts. Thus, in the case of a suit to resume a lakhiraj tenure, the Resumption Courts would pronounce upon the validity or invalidity of the tenure; but the Civil Courts might still entertain a suit between parties claiming the proprietary right, and desirous of being admitted to enter into the settlement with Government. This is also the view which was taken by Paul, J., in the case of [Pratap Narayan Mookerjee Vs. Madhu Sudan Mookerjee and Others](#) and the Judicial Committee of the Privy Council in their judgment in *Gonga Gobind Mundul v. The Collector of the 24-Pergunnas 11 Moore's I.A.*, 358 distinctly state this to be the law. In that judgment it is said--"If, as the Government

contends, these lands were rent-paying lands, the title of the Government was simply to the rent, the nature of which was that of a jama or tribute; and if the holders of these lands asserted then, or subsequently, a soundless claim to hold them free of rent as lakhiraj, that claim would not destroy their proprietary right in the lands themselves, but simply subject their owners to "liability to be sued in a resumption suit, the object of which is, not to obtain a forfeiture of the lands, but to have a decree against the alleged rent-free tenure, involving the measurement and assessment of the lands, and the liability of the person in possession, if he "wishes to retain possession to pay the revenue so assessed." Therefore, we should answer the first part of the question in the affirmative. The question is put in such a way that the first part of it must be answered in the affirmative, and the second in the negative.

2. It appears to me that there has been an error in the proceedings in holding that the Government was not a proper party to the suit. The Government having given a lease of the lands to another person, it was proper that it should have an opportunity of showing that this had been properly done; if the Government were a party to the suit, the person who got the lease from the Government, might be freed from liability upon it. Now another suit will be necessary to finally decide the matters between these parties, as the Government, being no party to this suit, will not be bound by the decision in it.

3. The decree of the lower Appellate Court must be reversed, and the case must be remanded to that Court for retrial. The defendant is in possession under a lease from the Government, and the Government should be made a party to the suit in order that (if it is clear that the plaintiff is entitled to the case) the defendant Wise may be released from liability.

Markby, J.

Upon the point referred I concur in the judgment delivered by the Chief Justice. Upon the question whether in a suit like the present it is necessary to make Government a party, I do not consider it necessary to express any opinion, as that point is not mentioned in the order of reference.

(1) Special Appeal 1622 of 1867, decided on 8th June 1868, by Bayley and Macpherson, JJ., who dismissed the appeal, Macpherson, J., remarking that the circumstances of the case were similar to those in Maharaja Joy Mungul Singh v. Tekaet Pokharun Singh 7 W.R., 465, and that the reasons for his decision were substantially the same as those of Norman, J., in the last named case, which he was quite prepared to follow. Bayley, J., in coming to the same conclusion, observed:--"Under Regulation II of 1819 the Government becomes the actual proprietor of the resumed mehal just as much as it would do in the case of an escheat of a Government purchased mehal. It is true the Legislature has given the Government the power to confer certain privileges on the ex-lakhirajdars and others. But there is no law that I am aware of enacted that Government is bound in all cases, and

under all circumstances, to divest itself of all proprietary right, or to preclude itself from making such arrangement as is made in this case with reference to the circumstances and position of the parties."

A review of this decision was afterwards granted. The judgments on review in which the former decision was upheld are reported in 8 B.L.R., 529, note.