

(1880) 03 CAL CK 0011

Calcutta High Court

Case No: None

Abhoy Churn Pal and
Another

APPELLANT

Vs

Kally Pershad
Chatterjee

RESPONDENT

Date of Decision: March 19, 1880

Acts Referred:

- Specific Relief Act, 1877 - Section 42

Citation: (1880) ILR (Cal) 949

Hon'ble Judges: White, J; Maclean, J

Bench: Division Bench

Judgement

White, J.

The circumstances out of which the present litigation has arisen are these:

2. The appellants, who were the plaintiffs in the first Court, claim to be entitled to certain shares in two properties, forming part of 46 bighas 7 cottas and 2 chittaks of land situate within the Mouza Brahminaca.

3. In 1862, the then patnidar of this mouza instituted resumption-proceedings in the Court of the Principal Sudder Ameen, against one Ram Tanu Pal and another, for the purpose of having it declared that the 46 bighas odd of land were liable to assessment. Ram Tanu Pal and his co-defendant alleged that the land was held under a valid lakhiraj title, and further alleged that several other persons besides themselves were interested in the land in question. Seventeen other persons were, accordingly, added as defendants, and the case proceeded to trial. The Principal Sudder Ameen held, that the lakhiraj title was not proved; and on the 11th July 1863 declared the land liable to assessment. In making this decree he considered that he had before him all the persons interested in the land. But the present appellants were admittedly not amongst the number of the defendants. They allege that they

were minors at the time, and that none of the 19 defendants were stated in the record to represent their interests in the land. No steps were taken under the resumption decree to have any rent fixed upon the land until 1875, when the respondent, the first defendant in the first Court, who had in the meantime become the purchaser of the patni taluk at a sale in execution of a decree for rent passed against the prior patnidar, commenced proceedings before the Collector with a view to the assessment of the land. The appellants appeared before the Collector in the course of those proceedings, and claimed to hold their shares as lakhiraj. The Collector did not go into their claim, but disallowed it, apparently on the ground that they had no locus standi to oppose the assessment. On the 21st December 1876, he fixed upon the entire 46 bighas of land a specific rent, which was affirmed by the Board of Revenue, and a final order was passed by the Collector on the 6th of March 1877.

4. In June 1877, the appellants brought the present suit, in which they seek to have the Collector's order fixing the rent set aside as against them, and to have it declared that they are entitled to hold their shares of the two properties, included in the 46 bighas, exempt from the payment of rent, and to be confirmed in the possession of their shares.

5. The first defendant, in his written statement, disputed the right of the plaintiffs to the shares which they claimed, or to any share in the land. He also relied upon the decree in 1863, which had declared the land to be mal or liable for rent, and alleged that the plaintiffs were bound by those proceedings, inasmuch as they were members of a joint Hindu family of which their uncle Hulodhur Pal was the head and manager, and inasmuch as Hulodhur Pal was one of the defendants in the resumption-proceedings which terminated in that decree.

6. The Munsif held, that the plaintiffs had proved their right to share in the two properties, but not in one of them to the extent of the share claimed. He also held, that the plaintiffs were separate in estate from their uncle, and were not parties to, nor were represented in, the resumption-proceedings of 1863. He further considered that the plaintiff's were not required in the present suit to prove the validity of their title to hold their shares rent-free, but being clearly of opinion that they were not bound by the Collector's assessment, he passed what he calls a modified decree, and declared that they were entitled to one anna, fifteen gandas, two cowries, and two krants share of the properties in dispute, and that the assessment made by the Collector, so far as the plaintiffs were concerned, was illegal and void.

7. The Judge of Burdwan on appeal dismissed the plaintiffs' suit, on the ground that to get the declaration asked for it was essential that they should prove a rent-free title in themselves, and that their vakeel admitted that they had not proved such title affirmatively in the first Court.

8. I agree with the learned Judge that the Munsif was wrong in dropping the question of lakhiraj title which the plaintiffs sought to have declared, and in proceeding to declare them merely entitled to shares irrespective of title. The declaration of a lakhiraj title is the gist of the declaration. If the plaintiffs are not entitled to have such a declaration, their suit ought to be dismissed.

9. I also agree in what is implied in the learned Judge's judgment, that as the plaintiffs have come into Court to obtain the declaration, the onus lies on them to show that they have a lakhiraj title. But I also think that they have proved it by showing that they are not bound by the resumption decree of 1863, and that the respondent is barred by the law of limitation from taking resumption-proceedings against them.

10. The decree in the resumption suit is not a decree in rem, or conclusive as to the status of the land, and therefore only binds the parties to that suit and their respective interests in the land. It is admitted before us that the first defendant is barred by the Limitation Act, and that being so, then, by force of the last section of that Act, the right to receive rent from the plaintiff's in respect of their shares of the land is extinguished, and the plaintiff's title to hold their shares rent-free is complete.

11. A suit for rent is, I think, a suit for the possession of property within the meaning of that section, and no such suit could be brought against the appellants until it had been determined in a previous suit brought against them by the respondent that their shares were liable to assessment. If the previous suit is barred, the suit for rent must be so also.

12. What the vakeel before the Judge below understood by affirmative proof, I do not know; but probably all that he means was, that his clients had not proved or could not prove, by documentary or other evidence, that the land in which his clients had shares had been held rent-free from before the date of the Permanent Settlement.

13. From the view which the Judge below took of the proof necessary to establish a lakhiraj title in the plaintiffs, it became unnecessary for him to decide at the hearing of the appeal before him whether the plaintiffs had any share in the two properties included in the land assessed by the Collector, or what was the extent of their shares, or whether they were bound by the resumption decree.

14. As regards the last point, inasmuch as they admittedly were not made parties defendants, nor were represented on the record by any one of the 19 defendants who were made such parties, I think that they are not bound by the decree.

15. As regards the first two points, it appears upon enquiry that they were not amongst the respondent's grounds of appeal to the lower Appellate Court. The respondent must therefore be taken to have accepted the finding of the Munsif that

the plaintiffs were entitled to the shares mentioned in his decree; it will be unnecessary, therefore, to remand the case to the lower Appellate Court.

16. I am of opinion, therefore, that the plaintiffs are entitled to a declaration that they hold their shares of the two properties in question free of rent, and are entitled to continue in possession of the same without being affected by the Collector's order of the 6th March 1877 assessing rent on the 46 bighas.

17. This suit was instituted after the Specific Belief Act, 1877, came into force, and I think that, having regard to the terms of Section 42 of that Act and the accompanying illustrations, the Court is bound, under the circumstances which appear in this case, to make such a declaration.

18. The resumption decree purports to render the whole land liable to assessment. Recently, and after that decree had lain idle for about twelve years, the present patnidar has taken proceedings before the Collector to have the benefit" of that decree; a canoongo has been sent by the Collector to measure the whole land and fix the rates payable for the whole, and a final order assessing the rents upon the whole has been passed. The plaintiffs appearance before the Collector to prevent the application of the order to their shares has been in vain. If the rent assessed is not fixed, there is every probability that all the land will be put up for sale, and the plaintiff's will be left to fight the question with an auction-purchaser. At all events, a state of things has arisen in consequence of the resumption decree and the action of the respondents, which renders the plaintiff's extremely liable to be disturbed in the possession of their shares, and to be involved in harassing litigation.

19. The appeal will be allowed. The decree of the lower Appellate Court will be reversed, and in lieu of it the plaintiffs will have a decree embodying the declaration which I have mentioned.

20. The plaintiffs will have their costs of this appeal and also their costs in the Court below.