

(1872) 03 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 721 of 1871

Madan Mohan Biswas
and Another

APPELLANT

Vs

William Stalkart and
Others

RESPONDENT

Date of Decision: March 4, 1872

Judgement

Kemp, J.

This is a suit brought by the agent of Rani Lalan Mani upon a notice dated the 24th of Chaitra 1276 (5th April 1870), addressed to Messrs John and William Stalkart of Slakes. The notice was issued under the provisions of a. 13 Act X of 1859, and is to this effect:--That in No. 12 khas baziafli bando basti mehal, Chur Sulkes, the defendants, the Messrs. Stalkart, hold a tenure which is recorded as dags Nos. 2 and 3 in the settlement proceedings, and that the area as per chitta is 13 bigas odd katas; that on measurement it being found that the; bare in their occupation 40 bigas of land; therefore there is an excess of 27 bigas odd katas in their occupation: that ryots of the same class, and holding lands of the same description, namely Messrs. Gregory and Mackenzie, pay a higher rent than the rent paid by the Messrs. Stalkart; and that the productive power of the soil has increased. The notice therefore is on this footing, that the defendants do, within seven days, appear and execute a kabuliat at the rate of Rs. 50 a biga. The suit was instituted on the 11th August 1870; and when the suit was instituted, Act VIII of 1869 (B.C.) was in operation in the district which has jurisdiction over the suit, supposing it to be brought in the proper shape. The suit was instituted in the Court of the Munsiff of Sulkea. The plaint states that the proper yearly jumma payable on the whole area is Rs. 2,000; that on the plaintiff's share the jumma would be Rs. 625 per annum. The plaintiff does not sue for the increased rate after notice for the whole year according to the terms of her notice, but sues, perhaps by way of a feeler, for three months' rent, namely, from Baisakh to Asar (April to June) for Rs. 156-4. The defence of the Messrs. Stalkart is a very elaborate and long one. It is not necessary to go into all the points raised is the defence on the merits of the case; it is sufficient for us to notice the points taken with

reference to this suit not being maintainable under the provisions of Act X of 1859 under which the notice was served, or under Act VIII of 1860 (B.C.) under which the plaint was instituted.

2. The Munsiff , in a very careful decision, notices only such of the pleas in the defence as are necessary to enable him to arrive at a decision as to whether he had jurisdiction to try the case under Act VIII of 1869 (B.C.) The points taken are that the land is situated in the heart of the town of Sulkea; that it never has been used for agricultural or horticultural purposes, or for any purposes incidental thereto, and, therefore, that the provisions of Act X of 1859 and Act VIII of 1869 (B.C.) will not apply.

3. With reference to that point, the Munsiff , after referring to certain decisions of an old date which are to a certain extent in conflict with decisions of a later date, gives a number of decisions of this Court which rule that such a suit will not lie, and the Munsiff says, and we think very properly says, that it would be in his opinion the safest course to follow the principle laid down in the later rulings. The Judge has substantially confirmed the ruling of the Munsiff . He is also of opinion, without quoting any decisions at length, that the Munsiff was right in holding that the later concurrent decisions of this Court supported the views taken by the Munsiff .

4. In special appeal it is contended that the lower Courts are wrong in holding that Act X of 1839 and Act VIII of 1869 (B.C.) do not apply, and that the cases referred to by the lower Courts do not finally settle the question; that, however applicable these decisions may be to cases under Act X of 1859, they are not applicable to cases under the latter Act, namely, Act VIII of 1869 (B.C.) This case has been brought to enhance the rent of the defendant; and although notice was issued under s. 18 of Act X, the suit itself was instituted, as already observed, after Act VIII of 1869 (B.C.) came into operation in the district of Howrah; we have been referred to a Government Gazette which notifies that the said Act would come into operation in the district of Howrah on the 13th of August 1870; the suit was instituted on the 18th of August 1870, and therefore there can be no doubt that it is governed by the later Act, namely, Act VIII of 1869 (B.C.) The suit is brought under s. 18 of that Act, and the words of that section are, almost word for word, the same as those of s. 17 of the former Act. The grounds upon which the notice proceeds are, 1st, that the productive powers of the land have increased; it does not say that they have increased otherwise than by the agency or at the expense of the ryot, or in what way they have increased; it merely says that they have increased; 2ndly, that the quantity of land has been proved by measurement to be greater than the quantity for which rent has been previously paid. The question therefore is whether under the rulings of this Court, such a suit can be brought under the provisions of that section. Speaking for myself I have repeatedly ruled, sitting with other learned Judges of this Court, that such a suit cannot be brought. It is admitted that the land occupied by the defendants is not used by them for agricultural or for horticultural purposes, or for any purposes incidental thereto. The land is used for a rope-yard, and it is not easy to understand how the productive powers of the land have been increased by the establishment of a rope-yard on that land; the land,

apparently, from the statement of the defendants, is land which would be useless for agricultural purposes, as it is a strip of land on the border of the river, subject to tides, and only useful for such purposes as that for which it has been used by the defendants. However, that is a question which is involved on the merits of the case. There are many decisions of this Court which have ruled that lands used for other purposes than for purposes of agriculture and horticulture are not lands liable to enhancement under s. 17 of Act X of 1859. Amongst many other decisions it will be sufficient to quote two, *Kali Mohan Chatterjee v. Kali Krishna Ray Chowdhry*, 2 B.L.R, App., 39 by L. S. Jackson and Markby, JJ., and there is also a very late case, *Rani Durga Sundari Dasi v. Bibi Umdatannissa* CL. 4, s. 23 of Act X of 1859, before Glover and Dwarka Nath. Mitter, JJ., where this point was fully considered; and although those learned Judges differed, the Senior Judge, Glover, J., was of opinion that there was no conflict of decisions; and although pressed by his learned colleague to refer the question to a Full Bench, he declined to do so, inasmuch as there was no conflict of decisions, and in doing so he was justified by the practice of this Court, because when there is no conflict of decisions, the Full Bench have invariably refused to decide the points referred. We are told that there is a probability of the decision just alluded to being appealed against. If that is so, the point will be definitely settled; but, as the law at present stands, and with reference to the ratings of this Court, we think it right to follow the consistent decisions of a later date, and we therefore upheld the decisions of the Courts below, and dismiss the special appeal with costs.

Glover, J.--I retain the opinion expressed by me in the case of *Rani Durga Sundari Dasi v. Bibi Umdatannissa* CL. 4, s. 23 of Act X of 1859. I therefore concur in dismissing the appeal with costs.