(1869) 04 CAL CK 0035

Calcutta High Court

Case No: Special Appeal No. 3251 of 1868

Rajaram Roy and Others		APPELLANT
	Vs	
Charles Macdonald		RESPONDENT

Date of Decision: April 15, 1869

Judgement

Glover, J.

The plaintiff in this suit is a co-sharer in a certain mauza in Zilla Tirhoot, and his suit is to recover possession of 72 bigas, 1 kata, 3 dhoors of land from the defendants in this wise:--The allegation of the plaintiff is that, in the year 1269, be leased his share of the estate to the defendant, the manager of an indigo factory, and along with that share likewise leased to him certain zerayat lands, which he cultivated himself within the mauza as a ryot; that at the time of the expiration of the zuripeshgi lease, the defendant gave back to him possession of his share of the estate but retained the zerayat lands; and to recover these, the present suit is brought. The defendant''s statement is that the lands which the plaintiff asserts had been given to him (defendant) along with the pati were never held by the plaintiff, but were the lands of one Gandowr Sing, a co-sharer in the estate from whom the defendant holds. The first Court dismissed the plaintiffs'' suit; but the Judge, on appeal, found that the 72 bigas in dispute comprised the zerayat cultivation of the plaintiff apart from his share in the estate; that these lands were identical with the land which the defendant claimed to hold from Gandowr Sing; and that the plaintiff was entitled to possession.

2. In special appeal it is contended in the first place that as this suit assumes the relationship of landlord and tenant between the plaintiff and defendant, the suit was not cognizable by the Civil Courts, under Act VIII of 1859, but should have been instituted in a Revenue Court under Act X of 1859; and, secondly, that, supposing the suit to have been rightly brought in the Civil Court, it was incumbent on the plaintiffs to show a distinct title for these particular lands, inasmuch as the defendant claims to hold for Gandowr Sing, who is not shown to be other than a shareholder in the estate, and that the defendant, holding through Gandowr Sing,

would have, at least, a joint interest in the mauza, and thus a sufficient title to defeat the plaintiffs'' suit. With regard to the first objection, we find that the plaintiffs never considered or said that they considered the defendant as their tenant; on the contrary their allegation was that, from the date of the expiration of the zuripeshgi lease, the zerayat lands had been forcibly withheld from them. by the defendant, who, from that time, was a trespasser, and the defendant, from the very first, distinctly repudiated the relationship of tenant to the plaintiffs, alleging that he held from a third party. We think therefore, that this suit was undoubtedly cognizable by the Civil Courts, and that the Revenue Courts had no jurisdiction in the matter.

3. With regard to the second objection, the Judge finds as a fact on the evidence, that the 72 bigas, which the plaintiffs now claim, formed the plaintiffs'' cultivation, exclusive of his share in the estate; that this was the Land which the plaintiffs made over to the defendant at the time of giving the zuripeshgi lease, and that the defendant has not returned, but still holds possession of that land. It is a notorious fact that, in the Behar districts, co-sharers in estates frequently hold land in cultivation over and above their share in the estate; they cultivate these lands themselves, as ryots paying rent as such to all the co-sharers, including themselves; so that, supposing Gandowr Sing, from whom the defendant claims to hold, to be a shareholder in a property, the only interest he could possibly have in these 72 bigas (after the finding of fact come to by the Judge), would be his right to receive a proportionate share of the rent of the land.

4. On the facts as found, it is clear that the lands which the plaintiffs claim, did not form the pati or share of Gandowr Singh, and could not have been leased by Gandowr Sing to the defendant as forming that share.

5. A further objection was taken by the special appellant''s pleader to the amount of damages; with reference to it, he relied upon a Full Bench decision of this Court, in the case of Ranee Asmed Kooer v. Maharanee Indurjeet Kooer Case No. 362 of 1867, April 4th, 1868 (B.L.R. Sup. 1003). It is possible that, had this objection been pressed below, or, indeed, at any stage of the proceedings (for it does not appear to have been taken in the grounds of special appeal), the ruling referred to might have had some application, and that the most the plaintiff could have recovered, would have been the amount of a fair and reasonable rent for the land, as if the same had been let to a tenant during the period of the unlawful possession of the wrong-doer, but we find, on referring to the Judge''s decision, that no objection was ever taken to the amount of damages claimed by the plaintiffs, and the plaintiffs'' patwari had given evidence as to the nature and the extent of the crops which could be grown on the land during the period for which damages are claimed.

6. As, therefore, the defendant chose to rest his case, entirely on the ground that he held the land from Gandowr Sing, and that the 72 bigas were not the property of the plaintiffs, and did not take any exception to the way in which the plaintiffs had calculated the damages, be alleged himself to have sustained. We do not think that,

at this late stage of the case, and specially considering that we are now in special appeal, we should be justified in re-opening the proceedings, or in applying a principle which the special Appellant himself never asked to have the benefit of. The special appeal must be dismissed with costs.