

(1869) 06 CAL CK 0052

Calcutta High Court

Case No: Special Appeal No. 330 of 1869

Bistu Chandra Chuckerbutty

APPELLANT

Vs

Iswar Chandra Chuckerbutty

RESPONDENT

Date of Decision: June 8, 1869

Judgement

Hobhouse, J.

In this case the plaintiff sued to recover certain lands on the following allegation. He said that the lands were lakhiraj bramatar lands within the defendant's shikmi talook; that they had been created as such lakhiraj by the Raja of Tippera, the zamindar of the talook, in favour of one Pranballab, and that he, plaintiff, partly by inheritance and partly by purchase, had become the possessor of the said lands. The plaintiff then went on to say that, on two certain dates which he specified, the defendant, who was the auction-purchaser, under Act VIII of 1865, B.C., of the under-tenure in which the lands were situated, had ousted him of the lands by causing a certain bamboo to be put up, and a certain demarcation to be made by the peon who went to give the defendant possession of his purchased property. The defendant denied that the tenure in question was a lakhiraj tenure of any kind, and on the issue as to whether or not the disputed land was the plaintiff's lakhiraj property, as alleged by him, the first Court found against the plaintiff, and dismissed his suit.

2. The lower appellate Court found the following facts. First of all, the Court found that the tenure in question was not proved to be a lakhiraj tenure created in the manner set up by the plaintiff; and, secondly, the Court found that the talookdar, one Gopinath, whose rights the defendant had purchased at auction, had granted a lakhiraj of the disputed bramatar lands of the talook not to Pranballab, as set up by the plaintiff, but to one Kasinath and, thirdly, the Court found that Kasinath had been for a very long time in possession of the disputed lands by virtue of his "lakhiraj."

3. Having found these facts, the lower appellate Court gave the plaintiff a decree not upon his title, but on the ground that he had been unlawfully dispossessed by the defendant, and that he was therefore unquestionably entitled to get possession until ousted by due course of law.

4. Now, upon the plaintiff's own averments in his plaint, it is quite clear that there was no unlawful dispossession. The defendant was an auction-purchaser of the shikmi tenure, and in furtherance of his purchase he had possession given to him by an officer of the proper Court in the usual manner, and it was not any forcible ouster which was the plaintiff's cause of action, but that cause of action was the possession given by an officer of the Court in the manner I have above described. It is clear therefore that, on the grounds on which the lower appellate Court has based its judgment, that judgment cannot stand. But the special appellant further contends that upon the finding of fact of the lower appellate Court the plaintiff's suit absolutely fails; and we think that the contention is good in law. The plaintiff claimed to be put in possession of the lands in question as a bramatar tenure, created by the Raja of Tippera, the proprietor of the talook, in favour of one Pranballab. The lower appellate Court has found as a fact that the tenure was not so created, and this being so it is evident that the plaintiff's case as set up by himself, the case on which he claimed the lands, and on which alone he claimed them, altogether fails. We think therefore that, on this ground alone, the plaintiff's suit is liable to be dismissed. But there is another ground on which it is equally liable to be dismissed. The lower appellate Court has found as a fact that whatever title the plaintiff had, he derived from one Gopinath, the shikmi talookdar. If this incumbrance created by Gopinath is a legal incumbrance as against the special appellant, then if the defendant had not had any other ground to fall back upon, it is possible that the plaintiff's suit might still have been decreed; but the law, section 16, Act VIII of 1865, B.C. distinctly provides that "the purchaser of an under-tenure sold under this Act, shall acquire it free of incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which his under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees."

5. Now here, as we understand it, the defendant is an auction-purchaser under this particular Act. The lakhiraj incumbrance is found to have been created by the previous holder of the under-tenure, and it is not shown to us that that holder was in any wise authorized under the law quoted to create such an incumbrance.

6. This being so, we think that on the other ground also the plaintiff's suit was liable to dismissal, viz., that there was an incumbrancer placed there by a person who had no authority so to place him there, and whose acts are once become voidable when the defendants purchased the under-tenure. In this view of the case we think that the

judgment of the lower appellate Court must be reversed, and the judgment of the first Court restored and affirmed. This special appeal is accordingly decreed with all costs of this Court and of the lower appellate Court.