
(1919) 05 CAL CK 0032
In the Calcutta High Court

Abhoya Charn Latabaidya

APPELLANT

Vs

Srimati Kamini Probha Nag

RESPONDENT

Date of Decision : 02-05-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 159, 160(c)

Citation : AIR 1919 Cal 401 : 53 Ind. Cas. 188

Hon'ble Judges : Cuming, J; Asutosh Chandhuri, J

Bench : Division Bench

Judgement

1. The plaintiff is the purchaser in execution of a decree for arrears due in respect of the land in suit. Section 159 of the Bengal Tenancy Act controls his rights. He as purchaser takes the tenure subject to the interests defined in Chapter XIV as "protected interests." Section 160 deals with protected interests, and Clause (c) mentions any lease of land whereon plantations have been made amongst others. The land in suit contains a boraj or betel leaf plantation. It has been in existence for about 30 years. The land originally belonged to one Bam Kumar who claimed Lakheraj title to it. He made a settlement for a term of three years to the contending defendant for making betel groves. That lease undoubtedly provided that he was to give up the land after the expiry of the lease. He held over and continued to pay rent to Ram Kumar. It has been found by the learned Subordinate Judge that Rim Kumar's claim that it was Lakheraj land, is not justified. He has found, however, that Bam Kumar was not a trespasser, but he was the original owner; either as Lakherajdar or as raiyat and was in actual possession of the land. There was no want of good faith on his part, in settling the land with defendant No. 1 for a term of three years and no want of good faith on the part of the defendant No. 1 for taking settlement for the said term.

2. Reliance, however, is placed by the learned Subordinate Judge upon a Khatian, Exhibit 5, which Bays that the plaint lands were raiyati lands under the Maharaja, defendant No. 3. He finds that except the Potta Exhibit A, by which the land was

granted as the Lakheraj of Ram Kumar, there is no other document in favour of that contention. He has overlooked Exhibit C which is a mortgage and he has not attached any importance to the oral evidence which is quoted in his judgment, namely, that of witness No. 4. He thinks that the correctness of the Khatian has not been rebutted, whereas the learned Munsif having regard to all this evidence held that it was rebutted.

3. But the contention pressed before us is that the plaintiff's purchase is subject to the interest of defendant No. 1, who made a plantation and had a lease of the land whereon his plantation stood. There, is no doubt that Section 160 (c) covers snob interest. This has been held in *Banko Behary Das v. Krishna Chandra Bhowmick* 21 Ind. Cas. 419; 18 C. W. N. 349; 18 C.L.J. 170. There Mr. Justice Chatterjee held that the land in which a boraj is made is a protected interest within the meaning of Section 160 of the Bengal Tenancy Act. That judgment was affirmed by Sir Lawrence Jenkins, Chief Justice, and Mr. Justice Mookerjee. It has, however, been strenuously urged before us that the plantation referred to in Clause (c) must be a permanent plantation and that also the lease of the land referred to therein must be a permanent lease. But the Clause itself mentions "any lease of land", and so far, as the betel plantation is concerned, we think it is covered by the decision we have referred to and it is a protected interest. The whole of the land in Exhibit A was leased out as a boraj vita and there is a small orchard on it. *Kiran Chandra Roy v. Niamuddi* 30 C. 498, may in this connection be referred to. *Jogendra Narain Roy v. Kiran Chandra Bay* 50 Ind. Cas. 406; 23 C. W. N. 315; 46 C. 730 does not affect this case, as the whole of the land mentioned in the lease is boraj vita. There is no case made here for an enquiry if any portion of the land, can be excepted.

4. We, therefore, set aside the decree of the Subordinate Judge and affirm that made by the Munsif. The appellant is entitled to the costs of all Courts.