

(1919) 03 CAL CK 0050
In the Calcutta High Court

Aminaddi and Others

APPELLANT

Vs

Tarini Charan Mondal and Others

RESPONDENT

Date of Decision : 07-03-1919

Acts Referred:

Citation : 52 Ind. Cas. 673

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit to recover possession of newly formed Chur land as accretion to the plaintiffs' raiyati jote land, and for mesne profits.
2. The defence was that the land was reformation in situ of land which the defendants held under the Government in a Government Khas Mahal, and which had been submerged in the river.
3. It appears that the land was submerged in the year 1672 and re appeared in 190 5. After the reformation, the defendants took possession of the land and they have been in possession since then.
4. A Commissioner appointed by the Court of first instance found that the disputed land was included in Dags Nos. 143 and 144 of the map of 1876. The land was identifiable and in fact it had formed on the site of the land of the Potta (Exhibit B) under which the land had been let out to defendants in the year 1876. Having regard to these facts, the Court of first instance dismissed the suit.
5. On appeal, the learned District Judge held that the rights of the defendants to the land had been extinguished by reason of their not having paid any rent during the long period of submergence of the land, and that the land, therefore, was an accretion to the plaintiffs' estate. The defendants have appealed to this Court.
6. The learned Judge relied upon the case of Hemnath Dutt v. Ashgur Sindar 4 C. 894 : 2 Shome L.R. 142 : 2 Ind. Dec. (N.S.) 566. In that case it was held that

where land, held by tenants with rights of occupancy, was completely submerged for a number of years, and during the period of such submersion, no rent was paid by the tenants, the tenants had, by non-payment of the rent during the period of submersion, forfeited their rights of occupancy. That case was followed in another case, *Saligram Singh v. Paluk Pandey* 6 C.L.J. 149 n, where this Court held that u/s 6 of Act VIII of 1869 a raiyat retains his right of occupancy only so long as he pays rent, and that "although mere non payment of rent might not be conclusive evidence of abandonment, nonpayment of rent taken with submergence of land is sufficient to indicate an extinction of the right of occupancy." In that case, an occupancy holding diluviated at a time when Act VIII of 1869 was in force, and the lands remained under water for 13 years before the Bengal Tenancy Act of 1885 was passed. It was held that whatever right was acquired by the raiyat was extinguished by the non-payment of rent during the period of submergence before the Bengal Tenancy Act of 1885 came into force and the provisions of that Act could create no new rights in favour of the plaintiffs, nor revive those which had already been extinguished.

7. On behalf of the appellants reliance has been placed on the decision of the Privy Council in *Arun Chandra Singh v. Kamini Kumar* 22 Ind. Cas. 317 : 41 C. 683 : 19 C.L.J. 272 : 26 M.L.J. 251 : 18 C.W.N. 369 : 15 M.L.T. 182 : (1914) M.W.N. 175 : 16 Bom. L.R. 323 : 12 A.L.J. 243 : 41 I.A. 32 (P.C.), in support of the proposition that the rights of the tenants were still subsisting even though they paid no rent during the period of submergence. Referring to the case of *Hemnath Dutt v. Ashgur Sindar* 4 C. 894 : 2 Shome L.R. 142 : 2 Ind. Dec. (N.S.) 566 the Judicial Committee observed: "Their Lordships, however, do not find themselves in accord with the rule of law expressed in that case. They think that the principle applicable to this class of cases is correctly enunciated in *Mazhar Rai v. Ramgat Singh* 18 A. 290 : A.W.N. (1896) 56 : 8 Ind. Dec. (N. S.) 899." In the latter case where the lands of certain tenants became submerged by the action of a river, and the tenants though, they ceased to pay rent during the period of the submersion, made no overt indication of their intention to relinquish the said lands, but on the contrary, on the river again shifting its course, laid claim to lands which had emerged and which they alleged to be identical with their former holding, it was held that there had been no relinquishment. The Allahabad Court observed that it could not agree that the view of law expressed in *Hemnath Dutt's* case 4 C. 894 : 2 Shome L.R. 142 : 2 Ind. Dec. (N.S.) 566, "though it may be sound in Lower Bengal, is applicable to these Provinces." The judgment proceeded upon the ground that Act XII of 1881 and the Acts of a like nature which preceded it assumed that a tenancy of agricultural lands once entered upon continues until determined by effluxion of time, or by mutual consent, or in one of the ways provided for by statutory enactment, but mere nonpayment of rent does not of itself determine the tenancy.

8. In the case of *Hemnath Dutt's* case 4 C. 894 : 2 Shome L.R. 142 : 2 Ind. Dec. (N.S.) 566 the tenant was a raiyat and the case was governed by the provisions of Act VIII of 1869, under which a tenant could have a right of occupancy, only

so long as he paid rent; whereas in the case before the Judicial Committee the diluviated lands formed part of a permanent, heritable and transferable tenure. Their Lordships observed: "The diluviated lands formed part of a permanent, heritable, and transferable tenure: until it can be established that the holder of the tenure has abandoned his right to the submerged land, it remains intact," and it is accordingly contended on behalf of the respondent that the observations of their Lordships were directed to permanent tenures such as were under consideration in that case.

9. In the present case the lands diluviated in the very same year that the tenants obtained a lease of the land. They did not, therefore, even acquire a right of occupancy. The land remained under water for a period of more than 30 years. In these circumstances it is difficult to hold that the rights of the defendants were subsisting at the time when the land re appeared. It is unnecessary, however, to consider in the present case the effect of the decision of the Privy Council upon the rights of a tenant governed by the provisions of Bengal Act VIII of 1859, because even assuming that the defendants' rights were extinguished, the plaintiff is not entitled to the land as accretion, as the defendants are entitled to set up the rights of the Government,

10. In the case of *Lopez v. Muddun Mohun Thakoor* 13 M.I.A. 467 : 14 W.R.P.C. 11 : 5 B.L.R. 521 : 2 Suth. P.C.J. 336 : 2 Sar. P.C.J. 594 : 20 E.R. 625 Lord Justice James in delivering the judgment of the Judicial Committee observed : This principle is one not merely of English. Law, not a principle peculiar to any system of Municipal Law, but it is a principle founded in universal law and justice, that is to say, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a volcano, or a field covered by the sea or by a river, the ground, the site, the property, remains in the original owner." Referring to the provisions of the 4th clause of the Regulation XI of 1825, he said: "It is to be observed, however, that that clause refers simply to oases of gain, of acquisition by means of gradual accession. There are no words which imply the confiscation or destruction of any private person's property whatever. If a Regulation is to be construed as taking away anybody's property, that intention to take away ought to be expressed in very plain words, or be made out by very plain and necessary implication. The plaintiff here says: "I had the property. It was my property before it was covered by the Ganges. It remained my property after it was submerged by the Ganges. There was nothing in that state of things that took it from me and gave it to the Government. When it emerged there was nothing that took it from me and gave it to any other person, and in answer to such a claim it would certainly seem that something more than mere reference to the acquisition of land by increment, by alluvion, or by what other term may be used, would be required in order to enable the owner of one property to take property which had been legally vested in another." In the result their Lordships held that "lands washed away and afterwards reformed on an old site, which could be clearly recognised, are not lands gained within the meaning of Section

4, Regulation XI of 1825, viz., they do not become the property of the adjoining owner, but remain the property of the original owner."

11. As already stated, it has been found that the land is reformation in situ. That being so, it cannot be claimed by the plaintiffs as accretion to his estate. The ground upon which the judgment proceeds, is that if the rights of the defendants were extinguished before the land re-appeared, the land must be held to be accretion to the plaintiffs' estate. The learned Pleader for the respondent contended before us that that must be so because the land became part of the river or public domain and that the plaintiffs, therefore, acquired title to it by contiguous accretion.

12. If, however, as has been found in the case, the land is reformation in situ, we do not see how it can be claimed by the plaintiffs as accretion to their estate. Although the defendants may have no rights under the lease which they obtained from Government, the latter as the owner of the Kuas Mahal is entitled to the land. As proprietor of the Khas Mahal, Government stands in the same position as a private Zemindar; and if the Government as the owner of the Khas Mahal had resisted the plaintiffs' claim, we do not think that the latter could have enforced their claim, having regard to the fact that the land is reformation in situ. The only person interested in the land is the Government, the owner of the Khas Mahal, and the Government has not raised any objection to the defendants' holding the land which they have been holding ever since its formation. They have held it, professing to do so as tenants under the Government, and in assertion of the same right in which they held under the Potta before the submergence of the land.

13. In these circumstances, we think that the view taken by the learned District Judge that the land must be held to be accretion to the plaintiffs' estate merely because the defendants' right under the lease might have been extinguished, cannot be supported.

14. The result is that the decree of the lower Appellate Court must be set aside and that of the Court of first instance restored with costs. We assess the hearing fee in this Court at one gold mohar.