
(1936) 03 CAL CK 0022
In the Calcutta High Court

Ananda Lal Chakravarty and Others

APPELLANT

Vs

Girindra Nath Chatterjee and Others

RESPONDENT

Date of Decision : 26-03-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105

Citation : AIR 1936 Cal 483

Hon'ble Judges : R.C. Mitter, J;M.C. Ghose, J

Bench : Full Bench

Judgement

R.C. Mitter, J.—The lands which are the subject matter of these appeals are in two touzies, namely Touzi No. 51 and Touzi No. 47 of the Alipore Collectorate. The appellants before us are the owners of Touzi No. 51 and the plaintiffs-respondents in these appeals are the owners of Touzi No. 47 having purchased the said Touzi at a revenue sale within 12 years of the suit. In the year 1911, there was a petty settlement and all the lands except the lands of Khatian No. 959 and plot No. 1050 of Khatian No. 1024 were recorded in the possession of the defendants as not paying rent but liable to pay rent. The lands of Khatian No. 959 and plot No. 1050 of Khatian No. 1024 however were recorded in the petty settlement as Niskar lands in the possession of the defendants. The finding of the Assistant Settlement Officer in these cases is that the proprietors of Touzi Nos. 51 and 47 knew of the entries made in the petty settlement of 1911. After the petty settlement there was a regular settlement under Ch. 10 Bengal Tenancy Act. The Record of Rights was finally published in the year 1931. The lands which are the subject matter of all these nine appeals were recorded in the possession of the defendants with an entry that no rent was being paid but the persons in possession were liable to pay rent. After the final publication in the year 1931 the proprietors of Touzi Nos. 47 and 51 within whose estates the lands so recorded lie instituted proceedings u/s 105 Bengal Tenancy Act. The defendant raised an issue u/s 105-A that the lands are Niskar.

2. The findings of both the Courts below are that the lands are not Niskar, that is

to say, the defence raised, namely, that the lands were in fact valid Niskar grants have been negated as we read the judgments by both the Courts below. The claim however of the appellants before us, who are the proprietors of Touzi No. 51, have been rejected on the ground that they cannot at the date of the suit apply for assessment of rent. We will deal with the grounds given by the learned Special Judge and by the Assistant Settlement Officer in detail hereafter. But the claim of the proprietors of Touzi No. 47 to assess rent has been allowed, the Court holding that they being the revenue purchasers at a revenue sale within 12 years of the suit their claim cannot be defeated on the ground of delay. The position therefore is this that the lands are all joint lands of the aforesaid two Touzies. The proprietors of Touzi No. 47 have got decrees for assessment of rent on the basis that they are not Niskar lands, but the claims of the proprietors of Touzi No. 51 have been dismissed. The learned Assistant Settlement Officer said in his judgment that in the year 1911 the proprietors of Touzi No. 51 knew of the entries made in the Record of Rights in the petty settlement and inasmuch as they had not made any attempt to assess the rent within 12 years of the publication of the Record of Rights of the petty settlement, the defendants who were in possession without payment of rent so long have by adverse assertion acquired the right to hold the land rent free for ever as against them. This argument, says the Assistant Settlement Officer and the Special Judge cannot prevail against the proprietors of Touzi No. 47 because they are recent revenue purchasers.

3. The finding of the Assistant Settlement Officer appears to us to mean that it were the entries in the petty settlement record which really affected the proprietors of Touzi No. 51. The Special Judge however does not discuss any question of fact. He simply noted certain rulings, amongst them being the case in *Aman Gazi v. Birendra Kishore* (1912) 16 C W N 929 *Birendra Kishore v. Roshan Ali* (1912) 39 Cal 453 and the judgment of the late Chief Justice in *Jnanendra Narayan v. Sarada Sundari* 1931 Cal 25 He also notes another case, namely, *Dhananjay Manjhi v. Upendra Nath Deb* 1919 Cal 989 He seems to think that there is a conflict of authorities on the point he had to decide, and was of opinion that he was constrained to follow the latest case, meaning thereby *Jnanendra Narayan v. Sarada Sundari* 1931 Cal 25 He accordingly held that the right of the proprietors of Touzi No. 51 has been barred by limitation. There is no doubt that there is some conflict between the case in *Aman Gazi v. Birendra Kishore* (1912) 16 C W N 929 and the cases in *Birendra Kishore v. Roshan Ali* (1912) 39 Cal 453 and *Jnanendra Narayan v. Sarada Sundari* 1931 Cal 25 referred to above. But that conflict is not at all material for the purpose of the present case.

4. The cases are agreed and lay down the proposition that in order that the landlord's right to assess rent might be barred, it is necessary that there must be (a) an assertion by the man in possession to hold that lands rent free, (b) that the said assertion must be made to the knowledge of the landlord and (c) that the said assertion must be made to the knowledge of the landlord beyond 12 years of the institution of the proceedings for assessment. That is *Birendra*

Kishore v. Roshan Ali (1912) 39 Cal 453 and series of cases of the Maharaja of Tippierrah to be found in 22 C L J. That is a principle from which the late Chief Justice did not depart from in Jnanendra Narayan v. Sarada Sundari 1931 Cal 25 In Aman Gazi v. Birendra Kishore (1912) 16 C W N 929 however the position adopted is this: There was an assertion in the preparatory stage of the Settlement Khatian by the man in possession to the knowledge of the landlord that he had a rent free title, but in spite of that assertion the entry which was made in the finally published Record of Rights was that the man was an occupancy raiyat liable to pay rent. An interval of some years elapsed between the dates of assertion by the man in possession in the presence of the landlord's agent in the preparatory stage of the Record of Rights and the final publication of the said record and the question arose as to whether 12 years' limitation should run from the date of the first adverse assertion at the preparatory stage of the Record of Rights or from the date of the final publication. In that case it was held that the effect of the previous adverse assertion by the man in possession at the preparatory stage of the record was washed out by the entry being made in the Record of Rights that lands were liable to rent and the suit for assessment was in time as it was filed within 12 years of the final publication of the Record of Rights.

5. It is on this proposition, namely that the entry in that manner would wash out the effect of the previous adverse assertion on the part of the man in possession claiming Niskar right, that doubts were cast in the later cases, specially in Jnanendra Narayan v. Sarada Sundari 1931 Cal 25 decided by the late Chief Justice. But as we have said above no doubt has been cast upon the rule that before the landlord's right to assess rent in respect of lands, which have been recorded as liable to rent be barred, the assertion of a claim of Niskar must be made to the knowledge of the landlord 12 years before the proceedings for assessment of rent. In the present case there is no finding of the learned Special Judge that the person in possession had made that hostile assertion to the knowledge of the landlords beyond 12 years of the dates of the applications u/s 105, Ben. Ten. Act. Prima facie therefore the proprietors of Touzi No. 51 are entitled to assess rent and their claim has neither been barred by limitation nor has been taken away or affected by any adverse assertion for the requisite period. In two cases however, namely with regard to Appeal No. 208 which relates to Khatian No. 959 and to plot No. 1050 of the Khatian No. 1024 which is the subject-matter of Appeal No. 206, the position stands in a different way. Although there is no finding of the learned Special Judge with regard to the date of assertions made to the knowledge of the landlord in these two cases at all, it is quite clear from the findings of the learned Assistant Settlement Officer that the landlords, namely the proprietors of Touzi No. 51 did know that the persons in possession of the lands recorded in Khatian No. 959 and of plot No. 1050 of Khatian No. 1024 had been claiming Niskar right since 1911, because the entry in the petty settlement with regard to these lands was that they were rent free lands.

6. We accordingly hold that the proprietors of Touzi No. 51 cannot now have the

rent assessed in respect of the lands in Khatain No. 959 and in respect of plot No. 1050 of Khatian No. 1024, but with regard to the lands recorded in other Khatians which are the subject-matter of the remaining appeals and of Appeal No. 206 also the landlords are entitled to assess rent. The net result therefore is that Appeal No. 208 is dismissed with costs. Appeals Nos. 207 and 209 to 214 are decreed with costs against the defendants respondents in all the Courts. The appellants in these appeals would get a decree for assessment of rent at the same rate at which the rent had been assessed in favour of the proprietors of Touzi No. 47 in respect of the Khatians relating to these appeals. Appeal No. 206 is decreed in part. The plaintiffs-appellants claim in this appeal to assess rent on plot No. 1050 of Khatian No. 1024 is dismissed. But they would be entitled to have the rent assessed in respect of the remaining plots of the said Khatian. As rent has not been assessed separately for these plots this case must be remanded to the Court of first instance in order that the rent in the share of the plaintiffs-appellants may be assessed in respect of the plots of Khatian No. 1024, save and except plot No. 1050. In this appeal the plaintiffs-appellants will be entitled to their costs in proportion throughout against the defendants-respondents. The proportion would depend upon the final result after the decision by the Court of first instance, and would be determined by that Court.

M.C. Ghose, J.

7. I agree.