

(1919) 06 CAL CK 0018
In the Calcutta High Court

Anukul Chandra Chakrabarti and Another	APPELLANT
Vs	
Tufani Sheikh and Others	RESPONDENT

Date of Decision : 13-06-1919

Acts Referred:

Citation : AIR 1919 Cal 619 : 53 Ind. Cas. 925

Hon'ble Judges : Asutosh Chaudhuri, J

Bench : Single Bench

Judgement

Asutosh Chaudhuri, J.—The only question for de-termination in this appeal is whether the holding, which is within the municipal limits of Rajshahyeltown, is an agricultural holding governed by the Bengal Tenancy Act, or whether it is governed by the Transfer of Property Act.

2. The following facts have been found, namely, that the defendants have been in possession for three generations of this holding and that for about 50 years they have got their homestead in a portion of the land. The trial Court found that it was an agricultural holding On the basis of an entry in a Cesse Return filed by the landlord and on the evidence that some of the land used to be cultivated. That Court also held that even if the holding was non-agricultural, the defendants had acquired a permanent right inasmuch as the holding had apparently been inherited from grandfather to grandson and the rent had been the same Upon both the grounds he din-missed the plaintiffs" suit

3. In the Appeal Court the learned Judge held that so far as the second point was concerned, the case in Moharam Sheikh Chuprasi v. Telamuddin Khan 13 Ind. Cas. 606; 16 C. W. N. 567; 15 C. L. J. 220. was distinguishable, inasmuch as in the case before him it had not been shown that the tenancy had been treated by the landlord as heritable and also because it had been found in the case in Moharam Sheikh Chaprasi v. Telamuddin Khan 13 Ind. Cas. 606; C. W. N. 567; 15 C. L. J. 220. that the land had been let out for residential purposes. Except as above he affirmed the decision of the trial Court. He held that the case had been rightly decided on the basis of the Cess Return in which the holding was shown

as an agricultural one. He is quite right in saying that if the holding was non-agricultural, it should have been entered in part 3 of the Cess Return, which refers to tenure-holders according to the definition of that term under the Cess Act.

4. The learned Vakil who has appeared for the appellants has contended that the learned Judge has not taken into account the chitta, Exhibit I, dated 1270, in which this holding is described as bastu. He argues that although the land may have been cultivated and paddy may have been grown upon it, yet having regard to the fact that the Chitta was earlier in date than the Cess Return of 1900, there was no definite finding that the land had been treated as agricultural land from its inception. He strongly relied upon the finding of the learned Munsif that the origin of the holding had not been shown and he said that in order to be considered a raiyat as defined in the Bengal-Tenancy Act it must be shown that the land was acquired for purposes of cultivation. His argument was that there was no finding to that effect and that, therefore, there ought to be a remand, and if necessary fresh evidence should be taken to ascertain as to what the character of the land was when it was first let out and also to consider the question as to whether it was cultivated as cultivable land and for what period, and then to determine the question as to whether any occupancy right can be claimed by the defendants.

5. Having regard to that contention, I had the whole of the evidence placed before me relating to the question of cultivation. Several persons had been examined on that point, old people who had known the land from their childhood, some of whom had actually taken part in its cultivation and some of whom were near neighbours. That evidence, taken with the fact that in the Cess Return of 1900 the land is described as krishi chashi raiyate that is, to my agricultural cultivated raiyati land, I think it may safely be held that the land was originally for agricultural purpose. The Chitta of 1270, which described it as bastu land, need not be taken as contradicting that fact. It is quite consistent with the fact that a portion of it was homestead land and a portion was agricultural land. Reference in this connection may be made to the case of *Mohesh Chunder Gungopadhyaya v. Bisho Nath Doss* 24 W.R. 402. in which Mr. Justice Markby points out the view taken by Mr. Justice Bayley in a decision in *Katie Kishen Biswas*. *Sreemutty Jankee* 8 W. R. 250. that there was a distinction between bastu land and land let out for the purpose of constructing a bashabari. Mr. Justice Bayley said that bastu land might be met with in ordinary cultivators' holdings, and Mr. Justice Markby said that he was not aware that that opinion had been dissented from in any case and that it would be a matter of surprise if a raiyat with an ordinary holding, having built his house upon a portion of it, were to find that although he had a right of occupancy as to the cultivable land he had no right of occupancy as to the rest, I find also an earlier case decided by Mr. Justice Markby, where he points out the distinction between houses in towns and what are called homestead lands of raiyate engaged in agriculture. See *Pogose v. Rao* 22 W. R. 511. I am unable to hold that the Chitta in any way

contradicts the argument based upon the description of this land as agricultural contained in the Cess Return.

6. It has also been pointed out to me that the learned Judge's finding that in the present case there has virtually, been an enhancement of rent is not justified by the evidence. The learned Munsif held that the rent had not been varied, but it is unnecessary to go into the question having regard to what I have held, namely, that the holding is an agricultural one governed by the Bengal Tenancy Act.

7. This appeal, therefore, fails and is dismissed with costs.