
(1931) 01 CAL CK 0008

In the Calcutta High Court

Case No : Appeal From Original Decree No. 2 of 1928

Apcar Collieries Ltd.

APPELLANT

Vs

Raja Jyoti Prasad Sing Deo Bahadur

RESPONDENT

Date of Decision : 27-01-1931

Acts Referred:

Citation : (1931) 01 CAL CK 0008

Final Decision : Dismissed

Judgement

Guha, J.—The suit out of which the present appeal has arisen was described in the plaint as one for declaration of the Plaintiff's title and for confirmation of possession. The Plaintiff the Apcar Collieries, Ltd., Appellants before us, came to Court to establish their title to the lands in suit mentioned and described in the two schedules to the plaint which were originally chaukidari chakran lands, and which had been resumed under the Chaukidari Act (Bengal Act VI of 1870) and in respect of which the zemindar, the Defendant in the suit, known as the Raja of Panchkote, had succeeded, during the course of the settlement proceedings in having entries recorded that the lands were " assessable with rent " and were " not mokuran." The Plaintiff Company in view of the entries in the settlement records wanted in their suit to have it declared that the findings of the Assistant Settlement Officers were erroneous and invalid, and the further declaration that the Defendant was entitled only to get the patni rent from the Plaintiff Company. The learned Subordinate Judge of Asansol, by whom the suit was tried, decided the question of title as raised by the Plaintiff Company in their favour, holding that the Apcar Collieries, Ltd. have acquired a valid title to the chaukidari. chakran lands as patnidars, by virtue of a patni settlement. The Plaintiff Company's right and title to the chaukidari chakran lands mentioned in the plaint were accordingly declared; the prayer of the Plaintiff Company for a declaration that the Defendant was entitled only to get the patni rent was refused, and it was declared by the Subordinate Judge that the findings of the Assistant Settlement Officers, referred to the plaint, were not erroneous and invalid, and that the rents payable by the Plaintiff Company in respect of the

lands in suit were enhancible. So far as the question of the title to the lands in suit is concerned, decided in favour of the Plaintiff Company, there has been no appeal by the Defendant in the suit. The appeal by the Plaintiff Company is directed against the decision and decree passed by the trial Court, so far as they go against the Plaintiff Company.

2. The facts of the case, so far as they are material for the purpose of this appeal may be briefly stated: Raja Nilmoni Singh Deo Bahadur, known as the Raja of Panchkote, granted a patni settlement of eight and one half mouzas, mentioned in one of the schedules to the plaint in this case, on the 25th June, 1853, to the predecessor-in-interest of the Plaintiff Company, the Apear Collieries, Ltd. The document evidencing the patni settlement shows that there were some chakran lands in the mouzas aforesaid, and that the grantee was to remain in possession of the patni mahal together with these chakran lands, by virtue of the settlement. Under the provisions of the Chaukidari Act, the Government resumed the chaukidari chakran lands comprised in the patni mahal, which were in due course transferred to the zemindar in the year 1898. The properties of the zemindar being at the time under the management and control of the manager appointed under the Encumbered Estates Act (Bengal Act VI of 1876), the manager endorsed the certificates of transfer issued by the Collector of Burdwan to Messrs. Apear & Co., the predecessors in title of the Plaintiff Company. The Plaintiff Company, it would appear, have been in possession of the lands so transferred, and have been paying revenue from 1899 to 1916 as assessed by the Government, to the chaukidari fund of the district. It would further appear that in July, 1917, the manager of the zemindar Defendant demanded the amount of revenue assessed on the chakran lands from the Plaintiff Company, and in point of fact, the amount of Rs. 306-5-3 was sent to the Defendant's Manager. In 1918 during the progress of the Cadastral Survey of the District, the officers in charge of the settlement operations, held that the rent payable to the zemindar Defendant, by the Plaintiff Company was " not mokurari " in the case of resumed chakran lands appertaining to Mouzas Santa, Narsunda, and in the case of the resumed chakran lands in the other mouzas mentioned in schedule of the plaint, it was recorded in the settlement papers that they were " liable to be assessed with rent." It should also be mentioned in this connection that, on the 81st January, 1899, there was a registered agreement executed by Messrs. Apear & Co., as patnidars, in favour of the Manager of the Panchkote Encumbered Estate (of which Raja Hari Narayan Singh Deo Bahadur, the predecessor of the Defendant in the present suit, was the then proprietor), binding themselves to pay the annual rent (or revenue) assessed upon the resumed chakran lands, to the chaukidari fund of the district, and it was agreed that Messrs. Apear & Co., shall remain and continue in possession of the said land, as part and parcel of the patni tenure.

3. The right of the Plaintiff Company to possession of the chaukidari chakran lands resumed in 1899 cannot be contested, and was not contested at the trial of the suit, regard being had to the terms of the settlement of 1853, described as

the patni bynama, Ex. 8 in the suit. This position has also been accepted to be correct and indisputable, by a series of decisions in this Court, and some of those decisions have been approved by their Lordships of the Judicial Committee of the Privy Council. The controversy between the Plaintiff Company on the one hand, and the zemindar Defendant on the other, was mainly, if not solely, with reference to the question whether the Plaintiff Company had a right to remain in possession of the resumed chakran lands as patnidars, without payment of any rent to the zemindar Defendant, in addition to the rent fixed by the patni bynama, of 1853, to which reference has been made above.

4. So far as this question is concerned, attempt was very seriously made on behalf of the Plaintiff Company, the Appellants to this Court, to argue it on the footing that the point arising for consideration had not been set at rest by any judicial pronouncement of the highest authority, entirely binding on us; and quite a number of cases decided by this Court was placed before us for our consideration. The question is however concluded against the Appellants, upon the authority of the decision of the Judicial Committee of the Privy Council in the case of Bhupendra Narayan Singh v. Narapat Singh L. R. 52 I. A. 355: s, c. 80 C. W. N. 553 (1925), and the position sought to be taken up by the Plaintiff Company in the suit, and in the appeal before us, as indicated above, could not possibly be maintained. Their Lordships of the Judicial Committee in the case referred to above, expressly held that when chaukidari chalet an lands included in a patni settlement have been resumed and transferred to the zemindar under Bengal Act VI of 1870, he (the zemindar) is entitled to the payment of a fair and equitable rent in respect thereof. In the opinion of their Lordships, the fixing of the rent is a condition precedent to the patnidar being put in possession. It may also be mentioned with reference to the argument, addressed to us. by the learned Advocate for the Plaintiff Company, in support of his contention in this behalf, based on the provisions contained in sec. 51 of the Chaukidari Act (the Bengal Act VI of 1870), that Lord Carson in delivering the judgment in the case mentioned above, referred to the observations of Lord Buckmaster in Ranjit Singh v. Maharaj Bahadur Singh L. R. 45 I A 162 at p. 166 ; s.c., 28 c, W. N. 198 (1918) which were to the effect following:-

It does not follow that because the rights originally arose by virtue of a grant declared to be a contract within the meaning of sec. 51, they are therefore rights, contractual in the sense that the contract by its terms creates and regulates the personal obligations and duties of the grantor in the circumstances that have arisen. At the time when the patni grants were made, the resumption of the chaukidari lands was not even contemplated, and the grant necessarily contains no reference whatever to the circumstances that would arise and the relationships that would exist in the event of the Government resuming possession.

5. In the above view of the question arising for consideration so far as this part of the case is concerned, there is no escape from the position that the Plaintiff

Company is bound to pay rent to the zemindar Defendant: rent in addition to the rent reserved in the patni bynama of 1853. The entries in the settlement records, so far as they negative the Plaintiff's contention in the suit that the Defendant was entitled only to get the patni rent from the Apcar Collieries, Ltd., or at most to get in addition to the patni rent, the Government dues for the resumed chakran lands, which are payable to the Collecting Panchayets under the provisions of Act VI of 1870, or that if the Defendant, the zemindar is entitled to realise those dues, he (the zemindar) is bound to pay it over to the chaukidari fund, under Act VI of 1870, must be held to be correct, and the Plaintiff's claim in suit that the Defendant is entitled only to get the patni rent, must accordingly fail. The Plaintiff Company can remain in possession of the resumed chakran lands, on payment of rent for the same, in addition to the patni rent settled by the patni bynama of 1853. This disposes of the main point in the case before us.

6. It has been contended further that the effect of the agreement of the 31st January, 1899, to which reference has been made above, was that the Plaintiff Company were entitled to hold the resumed chaukidari chakran lands as part and parcel of the patni created in 1853, without payment of any additional rent to the zemindar Defendant. It is said that under the agreement which was subsequently ratified by the zemindar in 1917, the latter was estopped from claiming additional rent in respect of the chakran lands resumed, and made over to patnidars, under Act VI of 1870. It is sufficient to say that neither by the agreement of 1899, nor by any other act or omission on the part of the zemindar, was there any estoppel or waiver, so far as a claim for additional rent in respect of the resumed lands was concerned. The evidence on the record, documentary and oral, does not justify any conclusion to the contrary. The learned Subordinate Judge in the Court, below, has rightly held that there is nothing to show that either expressly or by implication the Defendant Raja or the Manager of the Encumbered Estates, in whose management his estate was for some time, gave up the right to get additional rent for the resumed lands mentioned in the plaint. The Appellants' contention in this behalf cannot therefore be accepted.

7. The learned Advocate for the Plaintiff Company has argued before us that the entry in the settlement records in regard to the resumed chakran lands in two of the mouzas in suit, Mouzas Santa, and Narsunda, that the jamas were "not mokurari," is obviously incorrect, for the reason that even though the Defendant may be entitled to get additional rent for the resumed lands, the rent once fixed could not possibly be varied, as the lands appertained to a patni mahal. A point like this which was not raised before the trial Court at any stage, cannot be entertained, much less accepted at the appellate stage. The question as to whether the rent payable by the Plaintiff Company for the resumed chakran lands, could or could not be varied is a question which could not possibly be decided in this appeal; such a question was altogether beyond the scope of the suit as laid, out of which the present appeal has arisen.

8. Some argument has been advanced on behalf of the Appellant, as to the form of the decree passed by the lower Court, regard being had to the negative way in which a declaration against the Plaintiff Company has been given. It is necessary only to say with regard to this that for the purpose of disposing of the suit, it would have been sufficient to pass a decree directing that the suit be decreed in part: that the Plaintiff Company's right and title to the chaukidari chakran lands, as mentioned in prayer (a) of the plaint, are declared, and that the suit so far as it relates to the other reliefs claimed by the Plaintiff, as mentioned in prayers (6), (c) and (d) of the plaint, is dismissed. This form of order is to be preferred, and the decree should be varied accordingly, but subject to this variation, the decision and decree passed by the lower Court are affirmed, and the appeal dismissed with costs-hearing-fee five gold mohurs.

Rankin, C.J.

I agree.