

(1925) 01 CAL CK 0066
In the Calcutta High Court

Aswini Kumar Gupta and Others

APPELLANT

Vs

Kamini Kumar De, alias Manoo and Others

RESPONDENT

Date of Decision : 28-01-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 3(3)

Citation : 87 Ind. Cas. 798

Hon'ble Judges : Suhrawardy, J;Cuming, J

Bench : Division Bench

Judgement

Suhrawardy, J.—Defendants Nos. 3 to 5 appeal and take two exceptions to the decree as passed by the lower Appellate Court.

2. The first is that that Court ought not to have modified the decree of the Munsif by giving the plaintiffs a decree for the lands in suit. The plaintiffs claimed the tank and its banks as belonging to Khatian No. 1296, whereas the defendants alleged that they belonged to their Khatian No. 1268. The learned Munsif found that the khatian as a matter of fact supported the plaintiff's case and that it showed that the tank and its banks belonged to Dag No. 1269. But in the Settlement, map the figure 1268 has been placed in such a way as may be said to cover one of the banks of the tank. He has, therefore, passed a decree in the following terms: "Plaintiffs" rent-free raiyati right to Dag No. 1269 of the khatian (Ex. 5) will be declared and the plaintiffs will recover khas possession thereof." He has not exactly found what lands Dag No. 1269, covers in but he has referred to the khatian which will clearly lay down that it covered the tank and its banks. The decree should not have been passed in this form leaving that question as to the extent of Dag No. 1269 undermined though reference was made to the khatian. The point was taken before the learned Subordinate Judge in appeal and the issue arising out of the arguments addressed before him was "whether the plaintiffs have their alleged title to the disputed tank and its banks"? and his conclusion on this issue was that the disputed tank and its banks belonged to the plaintiffs' predecessor and that the disputed tanks and its banks were recorded

in the Settlement Record of Rights in the name of Gurudas" widow Kalitara who held it in possession by right of inheritance. He further observed that the plaintiffs and their predecessors were clearly in possession of the tank for about 50 years. On these findings he came to the conclusion that the tank and its banks belonged to the plaintiffs as covered by Dag No. 1269. It is contended on behalf of the appellants that the plaintiffs' Pleader gave the Court to understand that they claimed Dag No. 1269 and nothing more and, therefore, they did not adduce sufficient evidence to show that the banks did not, cover Dag No. 1269. This objection does not appear to have been substantiated by the record. Both the parties adduced evidence in support of their respective cases and the issue was whether the tank with its banks was included in the plaintiffs' dag or in the defendants' dag. The learned Subordinate Judge found that they were included in the plaintiffs' dag though he did not say so in so many words. We do not think that the decree as passed by the lower Appellate Court on this point is incorrect. This objection fails.

3. The next objection taken is that the learned Subordinate Judge was wrong in modifying the decree of the Munsif with regard to the status of the plaintiffs with reference to the land in suit. The Munsif found that the plaintiffs held the land rent free. But relying on the evidence and the fact that their predecessor was recorded banks rent free he declared the plaintiffs' right as niskar raiyati that in his view the plaintiffs have required a niskar or rather a lakheraj title to the disputed tank", and if that be so, he does not think that the tenancy can still be held to be a raiyati holding. The reasoning is not quite clear, but it appears that what the learned Judge meant is that if a person holds a land free for a number of years, he does not acquire a raiyati right but an absolute title to the land. But in the present case the plaintiffs' predecessor has been recorded in the Settlement record as a settled raiyat of the village holding the tank with its banks rent-free. The plaintiffs themselves admit in their plaint that their predecessors held the land of the taluk in which the defendants are some of the landlords. It is possible for a raiyat to hold lands without paying rent to the landlord but he does not thereby become the proprietor of the soil. He may be a tenant in accordance with the definition of "tenant" as given in Section 3(3) Bengal Tenancy Act, and still under a special contract does not pay rent to the landlord. The learned Judge has not referred to any evidence on the point which has induced him to hold that the presumption arising from the Record of Rights has been rebutted. In this view we are of opinion that the decree assessed by the Munsif relating to the status of the plaintiffs is correct and should be maintained.

4. The result is that the decree passed by the lower Appellate Court should be modified declaring the plaintiffs' right to the tank and its banks as niskar raiyati right. With this modification the decree of the lower Appellate Court is upheld and this appeal dismissed. We make no order as to costs.

Cuming, J.

5. I agree.