
(1918) 08 CAL CK 0027
In the Calcutta High Court

Atal Behary Keora and Others

APPELLANT

Vs

Lal Mohan Singha Roy and Another

RESPONDENT

Date of Decision : 22-08-1918

Acts Referred:

Citation : AIR 1919 Cal 75 : 49 Ind. Cas. 507

Hon'ble Judges : Walmsley, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.

In No. 1762 of 1916.

1. This is an appeal preferred by the defendants against the decision of the learned Subordinate Judge of Hooghly, dated the 7th March 1916, affirming the decision of the Munsif of the same place. The plaintiffs brought the suit for recovery of possession of certain resumed Chowkidari Chakran lands. The resumption had taken place in the year 1896 97 and in July 1898, under the provisions of the Village Chowkidari Act, the lands were transferred to the Maharaja of Burdwan. The Maharaja of Burdwan on 24th July 1913 settled the property with the present plaintiffs. The defence of the defendants was this: They claimed through a putnidar. They said that the putnidar had a putni lease of the mahal in which this property was situated and that, therefore, this Chowkidari Chakran land, when resumed formed a portion of the land let out by the putni lease and was properly demised to them by the putnidar; and in support of that they attempted to prove as they were bound to prove the interest of their lessor i.e., the putnidar. The best evidence, of course, of that was the document creating the putni; and not only the defendants but the plaintiffs also were anxious that the document creating the putni should be produced. The plaintiffs first applied that the Court should request the Maharaja of Burdwan to produce the document," No particulars, however, were given; neither the thana in which the lands were situated nor the names of the parties to the document; and, in that view, the Maharaja's officers reported to the Court that without

further and better particulars they were unable- to trace the document amongst the papers of the Maharaja. Then the defendants applied to the Court. They gave certain particulars but the Maharaja's officers reported that the time within which the Court required the document to be produced was insufficient to enable them to trace the document amongst the Maharaja's "papers. That was not an unreasonable view of the Maharaja's officers. I do not know but I imagine that a landlord of the estate of the size Of the Maharaja of Burdwan's estate, during the length of time which is said to have elapsed since the grant of the document, would have, a great number of documents; and to search and to discover this kabuliyot amongst all those documents would be a search of considerable labour. The Court said that the best evidence available to prove the right of the defendants to the lands would be the grant of the putni lease to their lessor; bat as that evidence had not been produced it being available and could have been produced the Court said that it could not accept the secondary evidence that was offered in support of the grant of the putni lease. I think the learned Judge in adopting that view came to a wrong conclusion. If it was essential that the defendants should produce the putni lease, a -further period ought to have been granted to enable the Maharaja's servants and agents to report whether this document could be found amongst the Maharaja's papers," If it could not then it is quite clear that all reasonable steps having been taken the defendants were entitled to give secondary evidence of the contents of the document. I do not think in a case like this, where the defendants as well as the plaintiffs had done every, thing they could to produce the document and when the Maharaja's servants and agents reported that the document could not be found, within the time allowed, that the defendants should be held to have failed in their obligation to produce before the Court the best evidence available to prove the allegation. In that view of the case I think the judgment and decree appealed against ought not to stand and that we ought to remit the case to be reheard giving either party as I understand both the parties wish to get this document in evidence-- liberty to have the original putni kabuliyat produced; and in the event of their not being able to get it, to allow the parties to give secondary evidence of the contents of the document as provided by the law.

2. There is one other matter which remains to be mentioned. I would like to call the attention of the learned Judge of the lower Appellate Court to the recent decision of the Privy Council in the case of Ranjit Singh Bahadur v. Kali Dasi Debt 40 Ind. Cas. 98 : 44 C. 841 : 2 P.L.W. 1 : 21 C.W.N. 609 : 32 M.L.J. 565 : 15 A.L.J. 390 : 25 C.L.J. 499 : 19 Bom.L.R. 462 : (1917) M.W.N. 459 : 6 L.W. 101 : 22 M.L.T. 489 : 41 I.A. 117 (P.C.), When the learned Judge comes to hear the case, he will doubtless apply his mind to the principles that have been laid down by the Privy Council in that case.

3. The present appeal is, therefore, allowed. The judgment and decree of the learned Judge of the lower Appellate Court are set aside, and the case is remitted to him to re-hear the appeal in accordance with the observations made above. Costs will abide the result of the re-hearing by the learned Judge of the

lower Appellate Court.

Walmsley, J.

4. I agree.

In No. 1764 of 1916.

5. The judgment that: has just been delivered in Second Appeal No. 1762 will govern this case also. This case is also remitted to the lower Appellate Court on the same terms. Costs will abide the result.