
(1975) 01 CAL CK 0011
In the Calcutta High Court
Case No : A.F.A.D. No. 327 of 1959

Bagal Tanti and Others

APPELLANT

Vs

Ram Ranjan Laha and Others

RESPONDENT

Date of Decision : 10-01-1975

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103B(5), 3(17)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9
West Bengal Land Reforms (Amendment) Act, 1974 — Section 18(1)

Citation : AIR 1976 Cal 13

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Mukti Prasanna Mukherjee, for the Appellant; Balai Chandra Roy, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—This is an appeal against the judgment of affirmance. The plaintiffs instituted the suit for declaration of their title in respect of various plots of land in different khatians situate in the district of Burdwan and for confirmation of their possession therein.

2. The relevant facts as stated in the plaint are as follows. The plaintiffs' predecessor. Prahlad was an occupancy raiyat in respect of the five plots being the suit lands and the rent in respect of the plots, was share of produce inclusive of cess. After the death of Prahlad his four sons, plaintiffs Nos. 1 and 3, the father of plaintiff No. 4 and deceased plaintiff No. 2; continued to possess the disputed lands on :payment of rent till 1356 B.S. In 1357 B. S. they grew crops in the disputed lands but the defendants out of enmity tried to dispossess the plaintiffs from the disputed Lands. The plaintiffs accordingly "brought the suit for declaration of their sthitiban raiyati right in respect of the suit lands and also for recovery of possession in case they were dispossessed during the pendency of the suit and also for permanent injunction.

3. The defendants Nos. 1, 2, 3, 5 and 6 only contested the suit by filing a written statement. The defence was that Prahlad Laha had no occupancy right in respect of the disputed plots but that he was a mere bargadar in respect of those plots under the two groups of landlords, viz. Mitra Babus and Mukherjee Babus. It was further stated that in Chaitra, 1346 B. S. the heirs of Prahlad Laha and Chandra Gorai in whose names the disputed plots were recorded, surrendered the disputed lands in favour of the landlords and thereafter the landlords took khas possession of the same and set them cultivated by defendant No. 2 as their bhag chasis and they also similarly let out different defendants. They contended that they were bargadars accordingly in respect of the suit lands at the time of the institution of the suit. The defendants denied the right, title and interest of the plaintiffs in the suit lands. The further defence was that the suit was barred "by limitation and bad for misjoinder of parties and causes of action."

4. The learned Additional Subordinate Judge on a trial on evidence held that the plaintiffs were sthitiban raiyats and continued to be so till the date of the suit. It was further found that the defence case was not true. It was also held that the suit was not barred by limitation and nor bad for misjoinder of parties and causes of action; The suit was accordingly decreed and the defendant No. 1, who was appointed Receiver was directed to make over possession, of the suit lands in favour of the plaintiff and in default the plaintiffs were made entitled to recover possession through execution of decree.

5. An appeal was preferred against this decision and the appellate court agreed with the findings of the trial court and dismissed the appeal. The present appeal is against this decision.

6. The first contention raised by Mr. Mukti Prasanna Mukherjee, learned Advocate for the appellants, is that the plaintiffs in support of their case have not been able to rely on any document except the record-of-rights. According to him the record-of-rights is not a document of title but merely of possession and there is no presumptive value regarding title. In the c. s. record-of-rights, which was prepared sometime in 1936, the plaintiffs' predecessors are recorded, as occupancy raiyats and in the column of Khajna a share of produce is mentioned. u/s 103-B (5) of the Bengal Tenancy Act, every entry in a record-of-rights, finally published, shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved by evidence to be incorrect. The record-of-rights contains the entries of the plaintiffs' predecessor as sthitiban raiyat subject to a khajna of a share of produce. These are entries in the record-of-rights finally published and about this there is no dispute. That being the position, these entries are presumed to be correct in respect of matters referred to therein unless proved by evidence to be incorrect. No evidence has been adduced on behalf of the defendants to show that these entries are incorrect although certain documents showing transactions about some of the suit lands appear to be produced in court and exhibited. In these documents the plaintiffs' or their predecessors are not parties and the statements made therein are not

binding on them. It must accordingly be held that the defendants have failed to rebut the presumption of correctness of the entries in the record-of-rights.

7. Mr. Mukherjee's further grievance is that the onus has been shifted on the defendants to prove their title although under the laws of procedure it is the plaintiffs who are required to prove their title "before they are made entitled to a decree. It however appears to me that under the provisions of Section 103-B (5), the entries regarding plaintiffs' title are recorded as sthitiban raiyat which right the plaintiffs had claimed and the said entries according to the said section, are to be presumed correct unless rebutted. On the face of these entries the onus certainly lay on the defendants to disprove the correctness of the entries if they intended to do so and accordingly there is no wrong shifting of onus on them as contended.

8. Mr. Mukherjee further contended that under the amended Bengal Tenancy Act, u/s 3 (17) a tenant means a person who holds land under another person and would be liable to pay rent to that person. Under the system known as Adhi Barga or Bhag a person cultivating the land of another person on condition of delivering the share of the produce to that person is not a tenant unless he has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour -and accepted "by him or he has been or is held by a civil court to be a tenant. We have seen that the c. s. record records that the plaintiffs' predecessor was a tenant under two zemindars noted above and it is also their case that the settlement was taken as far back as in 1315 or 1317 and this commencement of the settlement was more or less admitted by the defendants while the evidence of a co-sharer landlord also does not say that the plaintiffs' predecessor had no tenancy right in respect of the disputed land. It is not shown that this section had any retrospective effect. So on the facts as found by the appellate court it appears that the plaintiffs' predecessors were tenants of the suit land even before the promulgation of the Bengal Tenancy (Amendment) Act of 1928 whereby the definition of tenant was amended. For that reason, in my opinion, the amendment does not assist the defendants-appellants in this case.

9. About the contention of mis-joinder of parties and causes of action it is said that the landlords should have "been made parties in the proceeding which is a suit for declaration of title in respect of the tenanted land and accordingly in their absence the suit is not maintainable in law. It further appears to me that the plaintiffs have no grievance against the landlords who had not interfered with their possession in any way. Their grievance is against the person who claimed to have taken the land under bhag system from such landlords or owners of the land. As the defendants were directly interfering with the plaintiff's possession and disputing their title, I do not think that the owners of the land should be made parties in these proceedings which only want a declaration against these defendants and also confirmation of possession or recovery of possession in the event they are dispossessed. Accordingly I do not think that the said owners are

necessary parties in the suit or that the suit is bad for mis-joinder of parties or causes of action.

10. Mr. Mukherjee further contended that the entries in the record-of-rights do not support the plaintiffs' case inasmuch as against the plaintiffs' title the words "bhag" has been entered. It is to be noted that the word "bhag" or share of crop is entered in the column of Khajna or rent and there can be no dispute that the share of crop can be part of a settlement. I, therefore, find that there is no inconsistency in the entries of the record-of-rights. It is further submitted relying on the provisions of the West Bengal Land Reforms Amendment Act, 1974 (West Bengal Act XXXIII of 1974) that in view of the fact that the question in this proceedings is as to whether a person is or is not a bargadar the matter should have been left to the officer or authority mentioned in paragraph 18 (1) of the said Act. It may be mentioned here that by the said Amendment Act Sub-section (3) containing the above provisions has been inserted after Subsection (2) of Section 18. Relying on this provision Mr. Mukherjee contended that the proceedings should be stayed in this Court and the matter should be referred for a decision to the officer or authority mentioned in Sub-section (1) of Section 18. Sub-section (1) of Section 18 concerns itself with a dispute between a bargadar and the person whose land he cultivates in respect of some matters viz., division or delivery of the produce, recovery of produce u/s 16-A, termination of cultivation by the bargadar and place of storing or threshing the produce. This provision thus clearly indicates that the conflict which is amenable to the decision u/s 18 (1) is between a bargadar and the person whose land he cultivates. It is not concerned with the dispute between a person claiming as a bargadar and a third party who claims his title independently of the person under whom the bargadar holds. I, therefore, think that the provision of Amendment Act does not stand in the way of a decision by a Civil Court in regard to the suit lands.

11. for all these reasons this appeal fails and is dismissed.

12. There will be no order for costs.

13. Leave under Clause 15 of the Letters Patent is asked for and is granted.