

(1904) 04 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1640 of 1901

Baidya Nath Mondal and Others

APPELLANT

Vs

Sudharam Misri and Others

RESPONDENT

Date of Decision : 11-04-1904

Acts Referred:

Citation : (1904) 04 CAL CK 0004

Final Decision : Dismissed

Judgement

1. The question raised in this case is one between the purchasers at a sale for arrears of Government revenue on the one side and certain persons claiming a mourasi right in the lands in dispute, who have been found to have only occupancy rights therein on the other side--that question being whether the Defendants are entitled to the exemption mentioned in the proviso to sec. 37 of the Revenue Sale Law, Act XI of 1859. These persons, or, rather their respective predecessors in title, obtained many years ago, in the first place, amalnamahs and then registered leases from the several proprietors of the estate, now purchased by the Plaintiffs under which each lessee had a certain undivided share in the entire quantity of land leased out, namely, 172 bighas, bearing a proportional rental. Subsequently, the grantees divided the lands amongst themselves, presumably with the consent of the proprietors and held the lauds separately on payment of rent to the respective proprietors. Afterwards the estate was sold for arrears of Government revenue and the auction-purchasers thereupon sought to eject the Defendants and to obtain khas possession of the lands in question. The Court of first instance held that, save and except Defendants Nos. 7 to 9 who were in possession of 13 bighas and odd cottas of lands, the other Defendants had established their occupancy rights, but that such rights were subject to enhancement of rent, and that the Plaintiffs were entitled to recover khas possession in respect of the said 13 bighas and odd cottas.

2. The District Judge, on appeal, has held that the Defendants are entitled to the whole of the lands in question as occupancy-raiyats at fixed rent and that the

Plaintiffs are not entitled to succeed as to any portion of their claim. And he has accordingly dismissed the entire suit.

3. The first and the main question that has been raised in this second appeal is whether, in respect of the undivided shares in the 172 bighas of lands held by the different tenants, there could be any right of occupancy, such as would be protected under sec. 37 of the Revenue Sale Law, it being contended, on the authority of certain cases, that because a lease in respect of an undivided share in a parcel of land cannot constitute a holding as defined by the Bengal Tenancy Act, such interest cannot be a raiyati interest which would be protected under the said sec. 37. The question, however, that was raised in the cases relied upon was very different from that raised in the present case. We may as well refer to those cases. In *Hurry Churn Bose v. Rajah Runjit Singh* 1 C. W. N. 521 (1896), the question was raised whether an undivided share in a parcel of land constitutes a holding within the meaning of sec. 55 of the Bengal Tenancy Act, and it was held that it does not. Similarly, in the case of *Haribole Brohmo v. Tasimuddin Mandul* 2 C. W. N. 680 (1898), it was held that an undivided share of lands does not fall within the definition of a holding as given in the Bengal Tenancy Act, and that sec. 30 of that Act does not apply to enhancement of rent in respect of such a share and, lastly, in the case of *Asidulla Sheikh v. Gagan Mollah* 6 C. W. N. 1000 (1902), it was held that a lease of an undivided share in several parcels of land does not create a holding within the meaning of the Bengal Tenancy Act and that, when the interest of such a lease is sold in execution of a decree for arrears of rent obtained by the landlord, the purchaser is not the purchaser of a holding within the meaning of sec. 159 of the Bengal Tenancy Act, and is not, therefore, entitled to annul the incumbrances under sec. 169 of that Act. But, as we have already indicated, the question that we have to consider in this case is very different from that which came before this Court for consideration in those cases. In the present case, what we have to decide is whether the Defendants are raiyats within the meaning of the proviso to sec. 37 of Act XI of 1859. That proviso runs as follows:--"Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws or otherwise than the former proprietor irrespectively of all engagements made since the time of settlement may have been entitled to do." Now, the leases were granted at a time when Act VIII (B.C.) of 1869 was in force; and it seems to us that, in order to determine the question whether the Defendants are raiyats having occupancy rights within the meaning of the proviso to sec. 37, we must see whether they could acquire such raiyati interest at the time when the leases were granted. That such raiyati interest could be acquired in a share of an undivided property is perfectly clear on the authority of the case of *Jardine, Skinner & Co., v. Rani Surut Soondari Debi* 3 C. L. R. 140 (1878), decided by the Judicial Committee of the Privy Council, where it was held that a right of occupancy might be acquired

in respect of an undivided share of a property. If then the interest which the Defendants acquired under the leases in question was a raiyati interest, is there anything in the Bengal Tenancy Act to take away such right when acquired ? We think not.

4. Turning then to the amalnamah and the leases produced on behalf of the Defendants, we think that the grants were raiyati interest and not of a middleman's interest. The lands were put in the physical possession of the grantees, though, no doubt, liberty was given to them to sub-let, if they chose. And it has been found by the District Judge that the purpose for which the tenancy was created was cultivation, and not collection of rents. That being so, we are of opinion that the Defendants are raiyats within the meaning of the proviso to sec. 37 of the Revenue Sale Law.

5. But then it has been contended that, having regard to sec. 5, sub-sec. (5) of the Bengal Tenancy Act, the land let out being over 100 bighas in area, the presumption is that it is a tenure and not a raiyati interest. The District Judge has, however, found, upon the evidence in the case, that such presumption has been rebutted by the Defendants ; and we think that the grant in each case, having regard to the terms of the lease, was really a grant of lands of a smaller area than 100 bighas. The learned Advocate-General has, in the next place, contended that, assuming that the view adopted by the District Judge is correct, there is no proper decision so far as the 13 bighas and odd cottas of lands which were found by the Subordinate Judge as not protected by sec. 37 of the Sale Law. The judgment of the District Judge is, no doubt, defective as regards the said 13 bighas and odd cottas of lands; but on a careful consideration of the judgment of the Subordinate Judge, we are satisfied that the view that he adopted was incorrect. He thought that, because in the kobala of the year 1888, executed by one of the original grantees, the lands conveyed, namely, 21 bighas and odd cottas were described as partly nij-jote and partly let out to tenants, therefore the lands (13 bighas and odd) in the possession of sub-tenants could not be regarded as raiyati. But it seems to us that, if the original grant was raiyati, any subsequent dealing in the way mentioned could not take away the true character of the tenancy. In this view of the matter, we think that the learned District Judge has come to a right conclusion though, as we have already indicated, his judgment is rather defective upon the matter. The result is that this appeal is dismissed with costs.