
(1911) 01 CAL CK 0013
In the Calcutta High Court

Baikuntha Nath Sen

APPELLANT

Vs

Bidhu Bhushan Jash and Another

RESPONDENT

Date of Decision : 23-01-1911

Acts Referred:

Village Chaukidari Act, 1870 — Section 61

Citation : 9 Ind. Cas. 322

Hon'ble Judges : N. Chatterjee, J

Bench : Single Bench

Judgement

N. Chatterjee, J.—The lands in depute were resumed as chaukidari chakran lands by the Collector under the provisions of Act VI of 1870 (B.C.), and transferred to the defendant No. 2, who is the zemindar of the mauzah in which the lands are situated.

2. The plaintiff claimed the lands as putnidar under defendant No. 2.

3. The defence was that the lands were not chaukidari chakran lands but were the lakhiraj lands of defendant No. 1 (ka) under whom the defendant No. I had been holding as tenant and that the former had purchased them in execution of a rent decree.

4. The learned Munsif held that the defendants could only dispute the validity of the order declaring the lands to be chaukidari chakran lands if they could show that the proceedings had been held without due notice to them and he held that he was justified in presuming that defendant No. 1 knew of the resumption proceedings and came to the conclusion that the lands were chaukidari chakran lands and gave a decree to the plaintiff.

5. On appeal, the learned Subordinate Judge held that the order determining the lands to be chaukidari chakran and the order transferring the same to the zemindar were not conclusive evidence as it does not appear that the lakhirajdar, defendant No. 1 (ka), was or could be any party to the proceedings before the Commissioner under the provisions of Act VI of 1870, though defendant No. 1 as

the person in physical possession might have been made a party, and he further held that the said orders not being conclusive, their value as evidence was very little and not sufficient to justify him in finding that the lands were chaukidari chakran lands and dismissed the suit.

6. The plaintiff has appealed and it has been contended on his behalf, first, that the question that the defendants did not get a notice of the proceedings was not raised in the written statements of the defendants and that he ought to have been given an opportunity to meet the question of notice; and, secondly, even if the orders are not final and conclusive, they are at any rate sufficient to shift the onus of proof on the defendants. The proceedings of the Commissioner, the resumption proceedings and the transfer certificates appear to have been produced in the present; case. The order of the Commissioner made u/s 61 has been held to be final and conclusive in the case of Nobo Kristo Mukherjee v. Secretary of State for India in Council 11 C. 632 and in the case of Madhu Sudan Banerjee v. Girish Chandra Ghose 2 C.L.J. 302; see also the case of Raja Narendra Lal Khan v. Jogi Hari 2 C.L.J. 107 : 32 C. 1107. The authorities of the cases in Nobo Kristo Mukherjee v. Secretary of State for India in Council 11 C. 632 and of Madhu Sudan Banerjee v. Girish Chandra Ghose 2 C.L.J. 302 have been doubted in the case of Hira Lal Mukherji v. Premamoyee Debi 2 C.L.J. 306, where it was observed by the learned Judges: If it were necessary, however, to decide the general question as to how far an order regularly made u/s 61 of Act VI of 1870 B.C., is conclusive in a litigation in the Civil Courts, we should be disposed to attach considerable weight to the argument that when Section 61 makes the order final and conclusive, it has reference only to the appellate jurisdiction which could be otherwise exercised by the Superior Revenue authorities under the first Clause of Section 29 of Regulation VII of 1822 and has no reference to the jurisdiction possessed by the Civil Courts under Clause (6) of that section." But in the circumstances of that case, it was not necessary to decide that point. I think that upon the authorities cited above, I must hold that if the proceedings u/s 61 are conducted in compliance with the provisions of Regulation VII of 1822 which are applicable to proceedings under Act VI of 1870 B.C. and after full notice to all the parties concerned, then the order u/s 61 is final and binding upon the Civil Courts. If it is found that there was an order u/s 61 of the Act, the presumption u/s 114 Clause (e) that official acts have been regularly performed would arise. If, however, defendant No. 1 (ka) had no notice of the proceedings, he cannot be held bound by the order u/s 61. It has been found by the lower appellate Court that defendant No. 1 (ka) had no notice of the proceedings.

7. The only question, therefore, is whether the plaintiff had an opportunity of showing that the defendant No. 1 (ka) had notice. The first Court did go into the question of notice, so far as defendant No. 1 was concerned but not with regard to defendant No. 1 (ka), who is said to be the lakhirajdar. The question of notice was not raised in the written statement. It is true the plaintiff did not allege in the plaint that the defendants had notice. But he relied upon the resumption

proceedings. The defendants, no doubt, denied that the lands were chaukidari chakran, but did not expressly deny the legality of the resumption proceedings. I think that under the circumstances the plaintiff should be allowed an opportunity to show that defendant No. 1 (ka) had notice of the proceedings before the Commissioner.

8. As regards the second question, I think that if defendant No. 1 (ka) had no, notice, of the proceedings, they are not such evidence against him as to shift the onus of proof upon him. I do not think that the defendant should be placed in a disadvantageous position by reason of proceedings to which he was no party, and of which he had no notice. The orders of the Chakran Commissioner and the resumption proceedings would, no doubt, be evidence in favour of the plaintiff. But the weight to be attached to such evidence is for the Court dealing with facts to decide. In the present case, the learned Subordinate Judge has considered that evidence and has found that their value as evidence is very little and is not sufficient to justify him in holding that the land is chaukidari chakran as claimed by the plaintiff.

9. The case should, therefore, go back to the lower appellate Court for a decision after giving an opportunity to the plaintiff to show whether defendant No. 1 (ka) had notice of the proceedings u/s 21 of the Regulation VII of 1822.

10. Costs to abide the result.