

(1941) 08 CAL CK 0017

In the Calcutta High Court

Case No : Letters Patent Appeal No. 16 of 1939

Biswa Nath Jana

APPELLANT

Vs

Bhupendra Nath Ghosh and Others

RESPONDENT

Date of Decision : 21-08-1941

Acts Referred:

Citation : (1941) 08 CAL CK 0017

Judgement

Mitter, J.—The Plaintiff is the tenant under the principal Defendant. On a transfer by the former tenant in favour of the Plaintiff describing the holding to be holding at a fixed rate of rent, the landlord, namely, the principal Defendant, instituted proceedings under sec. 26J of the Bengal Tenancy Act. In those proceedings, his case was that the holding in dispute was an ordinary occupancy holding and he was entitled on transfer to get landlord's fee under sec. 26D of the said Act together with compensation. The tenant, that is to say, the Plaintiff, pleaded therein that the holding was a holding held at a fixed rate of rent and consequently the landlord was not entitled to maintain the application under sec. 26J of the Bengal Tenancy Act. In those summary proceedings started under sec. 26J, the Court went into the question as to whether the holding in question was a mourasi mokarari holding or an ordinary occupancy holding and came to the conclusion that it was an ordinary occupancy holding and on the basis thereof awarded to the landlord the fee payable to him under sec. 26D of the Bengal Tenancy Act together with compensation. The tenant thereafter brought the present suit on the 14th February, 1936. In that suit, he prayed for a declaration that he was a raiyat at a fixed rate and not an occupancy raiyat. He also prayed for permanent injunction restraining the Defendant from realising the money ordered to be paid to him under sec. 26J. The last-mentioned prayer cannot be entertained and Mr. Choudhury concedes that. The question that remains to be considered is whether the Plaintiff is entitled to get a declaration that he is a raiyat at a fixed rate. On this question the Defendant set up a plea of res judicata, his argument being that the judgment pronounced in the proceedings under sec. 26J of the Bengal Tenancy Act operates as res judicata on this

question. The Court of first instance upheld the plea of res judicata. But inspite of its decision on the said point adversely to the Plaintiff, it went into the merits. On the evidence it came to the conclusion that the Plaintiff had established that he was a raiyat at a fixed rate. On appeal by the Plaintiff, the learned Subordinate Judge agreed with the view of the learned Munsif that the question about the status of the Plaintiff was barred by res judicata. On the merits, however, he did not agree with the findings of the learned Munsif and expressed an opinion that even if the issue had not been barred by res judicata, the Plaintiff could not succeed as he had failed to establish that he was a raiyat at fixed rate. A Second Appeal was carried to this Court by the Plaintiff. That appeal came on for hearing before our learned brother Mr. Justice S. K. Ghose. At that time the case of Krishna Chandra Mukherjee v. Manicklal Mukherjee 42 C.W.N. 793 (1938) had been decided by a Division Bench of this Court (Mr. Justice Costello and Mr. Justice Panckridge). In that case, that Bench disagreed with the judgment* of another Division Bench (Mr. Justice Guha and Mr. Justice Bartley), but instead of following the usual procedure of referring the matter to a Full Bench, the said learned Judges criticised the judgment* of Mr. Justice Guha and Mr. Justice Bartley and disagreed with the views expressed by them and came to the conclusion that the findings arrived at as to the status of the tenant in proceedings under sec. 26J of the Bengal Tenancy Act were res judicata in a subsequent suit brought for the declaration of the status of the tenant. Next year the same question arose before another Division Bench (Mr. Justice Mukherjea and Mr. Justice Roxburgh). The case is Maha Luxmi Bank, Ltd. v. Moulvi Abdul Khaleque 43 C.W.N. 1046 (1939). Those learned Judges went critically into the matter, disagreed with Mr. Justice Costello and Mr. Justice Panckridge and preferred to follow the view expressed by Mr. Justice Guha and Mr. Justice Bartley. In other cases also which it is not necessary to mention in particular the same view that had been taken by Mr. Justice Guha and Mr. Justice Bartley had been expressed. As we have stated above, Mr. Justice Mukherjea and Mr. Justice Roxburgh took the view that inasmuch as proceedings under sec. 26J were of a summary character, the finding arrived at in those proceedings about the status of the tenant would not be res judicata in a subsequent suit for a declaration. If the matter had rested with these decisions of the Division Benches in which conflicting views were taken, it would have been necessary for us to refer the matter to a Full Bench. But we do not feel that necessity by reason of a subsequent decision of the Judicial Committee in the case of Babu Bhagwan Din v. Gir Har Saroop L.R. 67 I.A. 1 S.C. 44 C. W. N 294 (1939). In that case the Right Hon"ble Sir George Rankin enunciated the principle in dealing with certain summary proceedings taken under sec. 3 of the Charitable and Religious Trusts Act (XIV of 1920) and he came to the conclusion that the findings arrived at in those proceedings would not be res judicata in a subsequent suit. The head-note runs thus:--

The decision of a District Judge on an application u/s 3 of the Charitable and Religions Trusts Act, 1920, for an order directing accounts to be famished in

respect of certain temple property, is a decision in a summary proceeding which is not a suit or of the same character as a suit; it has not been made final by any provision in the Act; and the doctrine of res judicata does not apply, even in the case of a person who was a party to the proceeding on the application under the Act, so as to bar a regular suit by persons claiming that the temple property was not impressed with a public trust, but was their private property.

The principles laid down by Sir George Rankin are equally applicable to proceedings under sec. 26J of the Bengal Tenancy Act. Those proceedings are of a summary character. No appeal is provided for and it is not expressly stated in the Bengal Tenancy Act that the decision as to the status, which will have to be arrived at in granting relief under sec. 26J, is to be final. Inasmuch as the principle formulated by the Judicial Committee in the case of Babu Bhagwan Din v. Gir Har Saroop L.R. 67 I.A. 1: s.c. 44 C.W.N. 294 (1839) mentioned above, supports the principle formulated by Mr. Justice Mukherjea and Mr. Justice Roxburgh in the case of Maha Luxmi Bank, Ltd. v. Moulvi Abdul Khaleque 43 C.W.N. 1046 (1939), referred to above, we prefer to follow this decision. We accordingly hold that the question of the status of the Plaintiff is not barred by res judicata by reason of the decision given in proceedings under sec. 26J of the Bengal Tenancy Act.

2. We have therefore to go into the merits of the case. The learned Munsif came to the conclusion that on the evidence the Plaintiff had established his case that he was a raiyat at a fixed rate. It was the common case that the Plaintiff and his predecessor were paying an uniform rent for a period of more than 20 years before the suit. That raised a presumption under sec. 50 in its favour. To rebut that presumption the Defendant's case was that the tenancy in question had been created after the Permanent Settlement of 1793. For the purposes of establishing that position he relied upon two documents to show the origin of the tenancy. The learned Munsif came to the conclusion that the identity of the land of the present tenancy with the lands mentioned in those documents and on which the landlord relied had not been established. The learned Subordinate Judge on appeal considered this point and came to the opposite conclusion. But we do not consider that the judgment of the learned Subordinate Judge is a proper judgment of reversal on this point. The matter must be investigated further.

3. We accordingly set aside the judgment of the learned Subordinate Judge and that of our learned brother Mr. Justice S. K. Ghose on the point of res judicata and we remand the case to the Lower Appellate Court in order that the question as to whether the Plaintiff is a raiyat at a fixed rent or an occupancy raiyat may be determined on the evidence that had been led by the parties.

4. The costs of the Letters Patent Appeal and of the Second Appeal No. 1153 of 1937 will abide the result.

Akram, J.

I agree.