
(1922) 08 CAL CK 0026
In the Calcutta High Court

Dhirendra Chandra Rai and Others

APPELLANT

Vs

Nawab Khaja Habibullah and Others

RESPONDENT

Date of Decision : 22-08-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148

Citation : AIR 1925 Cal 758

Hon'ble Judges : Walmsley, J; B.B. Ghose, J

Bench : Full Bench

Judgement

B.B. Ghose, J.—These two appeals are by the defendants and arise out of two suits for rent. The suit out of which appeal No. 2500 arises was for rent for about 213 acres of land comprised in permanent miras tenure created in 1864 A. D. in favour of the predecessor of the defendants at a rent of Rs. 359 odd. There has been gradual accretion of some lands contiguous to the lands of the miras in the bed of a river and the defendants are entitled to those lands as an increment to their tenure. The plaintiffs did not include these accreted lands in their suit for rent for the miras. It is argued on behalf of the appellants that the plaintiffs were bound to give the extent and boundaries of the land in their suit for rent u/s 148 of the Bengal Tenancy Act and as the accreted lands are an increment to the tenure the plaintiffs were bound to include those in their suit and as they did not do so the suit ought to be dismissed. We do not think that the contention is sound. The plaintiffs sued for rent for the lands let out under the lease of 1864 A. D. of which a proper description was given in the plaint. The fact that they might have asked for increased rent for the accretion to the tenure does not impose on them the penalty of having their suit for rent for the lands actually dismissed. This appeal therefore fails and is dismissed with costs.

2. The appeal No. 2499 arises out of a suit for rent for about 98 acres of land at the rate of Rs. 550 odd. These were lands gained by gradual accretion from a river and are contiguous to the lands for which the other suit was brought. The lands were brought under diara operations and formed into a separate estate of

which the plaintiffs took settlement from Government. The liability of the defendants to pay the rent is thus set forth in para. 2 of the plaint :-"The defendants have a miras taluk recorded at the annual rent of Rs. 550-3 as in respect of 987 acres of land...in 5/1 mouja Kistakati bearing No. 2436....and the same was recorded in khewat No. 2 and the defendants are in possession thereof. "It is not necessary to set out the pleas taken in defence. The lower Appellate Court has overruled the objections taken by the defendants and passed a decree in favour of the plaintiffs affirming that of the trial Court. It found that the diara officer fixed the rent payable by the defendants as claimed, which is fair and equitable and that the defendants are liable to pay rent at that rate. The grounds urged by the appellants against the decree are :- 1. The suit of the plaintiffs is barred as res judicata; 2. the defendants are not liable to pay the rent fixed by the revenue authorities for the lands and the plaintiffs can only claim for increase of rent u/s 52 of the Bengal Tenancy Act; 3. the lands being an increment to the old tenure of the defendants separate suit for the rent of these lands is not maintainable.

3. The plea of res judicata is based on the judgment of the Appellate Court in R. Appeal No. 30 of 1912 arising out of a previous rent suit. The pleadings in the suit have not been filed nor the judgment of the trial Court. It is not clear from the judgment produced what the issues in the rent suit were and from the materials on the record, so it is not possible to hold that the present suit is barred by res judicata. This ground must therefore fail.

4. In support of the second ground it is urged by the appellants that the diara officer was not vested with any authority under the law to settle any rent with regard to the lands in suit so as to fasten liability on the defendants and all that he was authorised to do was to ascertain the amount of rent capable of being realised from the lands for the purpose of assessment of revenue. The defendants are not consequently bound to pay the rent settled by the diara officer. This contention seems to be well-founded. Under Clause (1) of Section 4 of Reg. XI of 1825 these lands are to be considered as an increment to the tenure of the defendants. The last paragraph of that clause which referred to the liability of the under-tenant for payment of increase of rent has been repealed by the Bengal Tenancy Act and Section 52 of that Act has made provisions for increase of rent for increase of area. No additional rent was claimed for increase of area of the tenure under that section or any other provision of the law by the plaintiffs. The learned Vakil for the respondents relies upon the provisions of Section 2 of Act XXXI of 1858 and contends that the tenant is bound to pay the rent determined by the revenue authorities under that section. The first paragraph of that section leaves the rights of under-tenants as to alluvial land under Clause (1), Section 4 of Reg. II of 1825 unaffected. The second paragraph is to the following effect: It shall be the duty of all officers making settlements of such lands...to ascertain and record all such rights according to the rules prescribed in Reg. VII of 1822; and to determine whether any and what additional rent shall be payable by the person or persons entitled to any under-

tenures in the original estate. It may at first sight seem that this leads to the inference that the under-tenant would be bound to pay the rent so determined, but there does not appear to be any provision in the law under which it would be obligatory on him to do so. The learned Vakil for the respondent referred us to Section 9 of Reg. VII of 1822 as empowering the officer to settle rent. It seems to me, however, that the Collector is not empowered under that section to determine any rent so as to fix the under-tenant with liability to pay the amount fixed to his landlord, but he is only to record existing rights. If proceedings had been taken, under Part II of Chap. X of the Bengal Tenancy Act, by the diara officer he might have settled rent under the provisions therein laid down with consequential results. But there is no suggestion that any action was taken under that chapter. The diara proceedings have not been produced nor is there any evidence as to what was actually done by the diara officer. In order to make the tenant liable for additional rent for accretions to his tenure such rent must be settled under Chap. X of the Bengal Tenancy Act or the landlord must take proper proceedings so as to bring into operation Section 52 of the Act or any other appropriate provision of the law. Rule 550 of the Bengal Survey and Settlement Manual, 1917, may also be referred to in this connection. The relevant passage runs thus :-"He (the diara officer) will ordinarily be working under Chap. X of the Bengal Tenancy Act and will prepare the record under that Chapter. If there be no notification under Chap. X of the Bengal Tenancy Act, the diara officer will ascertain the Record-of- Rights of undertenants under Reg. VII of 1822 read with Section 2 of Act XXXI of 1858....The rights of under-tenants ascertained as above will not be affected by the nature of the arrangement made by Government with the proprietor." From this it would appear that where the diara officer does not work under Chap. X of the Bengal Tenancy Act he has been required only to ascertain and record the rights and not to settle the rents payable by under-tenants. In my opinion, therefore, there is no liability on the defendants to pay the rent settled by the diara officer for the lands in dispute. No other ground of liability of the defendants was alleged by the plaintiffs nor was any other argument advanced in support of the decree.

5. The learned Vakil for the appellants relied on the case of Assanullah v. Mohini 1899 26 Cal. 739 in support of his third contention that a separate suit for the rent of the lands is not maintainable. It would appear that at any rate, so long as the plaintiffs are entitled to the lands by virtue of settlement from Government these would not constitute a separate tenure held by the defendants under the plaintiffs. But in view of the decision on the second ground it is unnecessary to make any further observations on this point. In the result the defendants cannot be said to hold any miras taluk under the plaintiffs at the rent claimed. The appeal No. 2499 is decreed and the suit dismissed with costs in all the Courts.

Walmsley, J.

6. I agree.