
(1916) 08 CAL CK 0020
In the Calcutta High Court

Dwijendra Nath Roy Chaudhuri and Another	APPELLANT
Vs	
Aftabuddi Sardar and Others Narendra Nath Mitra and Others Vs Dwijendra Nath Roy Chaudhuri and Another	RESPONDENT

Date of Decision : 25-08-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106

Citation : 39 Ind. Cas. 209

Hon'ble Judges : Cuming, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. These 99 appeals arise out of as many suits, instituted u/s 106 of the Bengal Tenancy Act, originally before a Revenue officer, but, under the first proviso to that section, subsequently transferred to the Civil Court. The plaintiffs seek relief in respect of alleged omissions made by the Settlement Officer in the Record of Rights finally published on the 16th April 1909.
2. The lands in dispute are comprised in Dihi Bhadra, Purgana Buran, an estate bearing Tauzi No. 132 on the revenue roll of the Collector of Khulna. The Mitters and the Lahas are each entitled to a four-annas share in the estate. The remaining eight-annas share was originally vested in the Roy Chowdhuries of Satkhira; the plaintiffs, who represent one branch of that family, are now entitled to a three-annas share, and, some of the defendants, who represent the other branch of the family, are entitled to the residue of five-annas share. The grievance of the plaintiffs is that though they are thus admittedly a three-annas shareholders in the lands, yet no rent has been entered in the Record of Rights as payable to them by the tenants.
3. The precise question in controversy may be illustrated by reference to the details in one case, represented by the entry No. 65 in the Record of Rights. The seventh column shows that the area in the occupation of the tenants is 20 bighas. The eighth column shows that the rent payable in respect of the land in the occupation of the tenants is Rs. 31-12-19 gundas. The twelfth column shows

that the Lahas are entitled to receive, out of this sum, Rs. 9-12-12 gundas, the Mitters Rs. 9-12-12 and the Roy Chowdhuries, the co-sharers of the plaintiffs, Rs. 12-3-15 gundas. The plaintiffs seek a declaration that the entries in the eighth and twelfth columns are erroneous, because incomplete, and pray that they be amended in the manner following, namely, that in the eighth column the rent payable be shown, not as Rs. 31-12-19, but as Rs. 39-2-8 gundas and in the twelfth column, an additional entry be made to the effect that Rs. 7-5-9 gundas is payable as rent to the plaintiffs. It is worthy of note that the plaintiffs do not seek a declaration that the entry in the seventh column as to the area of the lands in the occupation of the tenants is erroneous.

4. The defendants resist the claim, substantially on the ground that the predecessors of the plaintiffs had, in or about the year 1853, dispossessed their co sharers as also the predecessors of the tenants from the lands comprised in the various tenancies and had absorbed them in a garden known as Shibnagar Bagan. Their contention in essence is that the effect of this action on the part of the predecessors of the plaintiffs had been to suspend the rent, otherwise payable to them, and that, in respect of the residue of the lands left in the occupation of the tenants, the rent is payable only to the thirteen-annas landlord, as recorded by the Settlement Officer.

5. The Trial Court found this defence established in the case of all the tenancies and dismissed the suits. On appeal, the Subordinate Judge has confirmed the decrees in 32 suits; but in the other 67 suits, he has either varied or set aside the decrees of the Primary Court. The result is that the plaintiffs have appealed against the concurrent decisions of the Courts below in 32 suits and the defendants have appealed in 67 suits where the decree of the Subordinate Judge modifies or reverses the decree of the Trial Court. The judgments of the Courts below are not remarkable for lucidity, and this may be due to the circumstance that numerous suits were by consent of parties tried together. But we are of opinion that it is not difficult to determine what the Courts below have in essence found.

6. One important question in controversy in the Courts below was as to the effect of eviction by a landlord of a tenant from a part or whole of the land of his tenancy. In the Primary Court, the view found acceptance that the effect of such eviction is to dissolve the relationship of landlord and tenant; and there are indications in the judgment of the Subordinate Judge that he possibly held that the eviction operated as adverse possession by the landlord against the tenant. In our opinion, there is no room for cotroversy that the tenancy is not terminated by eviction. If this view were not adopted, the result would follow that a landlord, by reason of the eviction itself (that is, his own wrongful act), would become forthwith entitled to treat the tenant as a trespasser and eject him from the entire holding, even if the eviction has been only from a portion thereof, a position which cannot be justified on any conceivable principle of law. The true position is that the eviction of the tenant, whether from part of the demised

premises or from the whole, entails a suspension of the entire rent while the eviction lasts, whether the tenant remains in possession of the residue or not; the tenancy, however, is not thereby terminated, nor is the tenant discharged from the performance of his covenants other than payment of the rent, such as a covenant to repair: *Hodgskin v. Queenborough* (1738) Willes. 129 ; 125 E.R. 1093 *Pellatt v. Boosey* (1862) 31 L.J.C.P. 281 ; 8 Jur. (N.S.) 1197 ; 186 R.R. 832; *Morrison v. Chadwick* (1849) 7 C.B. 266 ; 78 R.R. 627 ; 18 L.J.C.P. 189 ; 13 Jur. 633 ; 6 Dowl. & L. 567 ; 137 E.R. 107; *Newlon v. Allin* (1841) 1 Q.B. 518 ; 1 G. & D. 44 ; 10 L.J. Q. B 179 ; 6 Jur. 99 ; 133 E.R. 1231.

7. Now in the cases before us the Courts below have found that in or about the year 1853, the predecessor of the plaintiffs did dispossess the predecessors of the tenant defendants from portions of the lands of their tenancies. It is at this distance of time impossible to determine with accuracy how much land was taken away from each of these holdings and absorbed in the garden. The plaintiffs, however, have argued before this Court that in order to determine their rights it is obligatory upon the Court to investigate precisely how much land was taken away by them from the tenants. In our opinion, it is not necessary to adopt such a course. Whether the lands which were taken by the predecessors of the plaintiffs from the predecessors of the tenant defendants did or did not accurately correspond, in each instance, to a three-annas share of the land comprised in each tenancy, the result is the same; because, by reason of this eviction, so long as it continued--and it has continued up to the present time--the plaintiffs could not claim from the tenants the rent otherwise payable to them as landlords; no question of apportionment arises, for, where there has been an eviction, the entire rent is suspended. Consequently, at the date when the proceedings under the tenth chapter of the Bengal Tenancy Act took place and the Record of Rights was prepared, no rent was in law payable to the plaintiffs by the tenant defendants. In this view, the Settlement Officer could not possibly make an entry in the Record of Rights to the effect that rent is payable by the tenant defendants to the plaintiffs. Clause (e) of Section 102 shows that it is the duty of the Settlement Officer to enter in the Record of Rights the rent payable at the time the Record of Rights is in course of preparation. This has been placed beyond controversy by Act III of 1898, B.C. ; but it may be pointed out that the section, as it stood before the amendment, has been interpreted in the same sense in the case of *Sri Narain Thakur v. Maharaja Sir Luchmeshwar Singh Bahadoor* 6 C.W.N. 592. Consequently, the problem before the Settlement Officer was to determine what rent, if any, was payable by the tenants to the plaintiffs. He came to the conclusion that, no rent was so payable, because the plaintiffs had evicted the defendants from portions of the lands of their tenancies. The Court of first instance took the same view in all the suits, and, there can, in our opinion, be no doubt that the broad justice of the cases is on the side of the tenants. They were deprived by the plaintiffs of portions of their lands more than 60 years ago; the Settlement Officer has shown in the Record of Rights the actual quantity of lands now in their occupation, and the rent paid by them for

such lands to the thirteen-annas proprietors. The plaintiffs do not seek to have the entry as to area altered by the inclusion of the lands absorbed by them; they desire to have the entry as to the rent payable altered; but the alteration, if made, will not represent the true state of facts; it will show that the plaintiffs are entitled to rent from the tenants for the lands now in their occupation, which is contrary to the facts found.

8. We have already stated that the Subordinate Judge has confirmed the decree of the Trial Court in 32 of the suits; there can be no doubt, we think, that the concurrent decision of the two Courts in these cases is correct. We have next to consider the 67 cases where the subordinate Judge has varied or reversed the decision of the Primary Court. These cases may be divided into three groups. In the first group are comprised four suits, in which the rent receipts produced show that the tenants had acquiesced in the eviction effected by the plaintiffs, as they had been allowed reduction of rent for the land taken away from them. This clearly makes no difference in the position of the tenants. The Subordinate Judge holds that in order to suspend the rent, the eviction must be forcible dispossession. It is well settled, however, that the dispossession need not be by violence. To constitute an eviction, it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises; any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction: *Upton v. Townend* (1855) 17 C.B. 30 ; 104 R.R. 562 ; 25 L.J.C.P. 44 ; I Jur. (N.S.) 1089 ; 139 E.R. 976; *Henderson v. Mears* (1859) 28 L.J. Q.B. 305 ; 7 W.R. 554 and *Baynton v. Morgan* (1889) 22 Q.B.D. 74 ; 58 L.J. Q.B. 139 ; 37 W.R. 148 ; 53 J.P. 168. The result to the tenant is precisely the same, whether he is expelled by violence or is obliged, from the exigencies of the situation, to submit quietly to the high-handed act of a powerful landlord.

9. In the second group are comprised 27 suits, where the Subordinate Judge has found that rent had been realized from the defendants by the plaintiffs up to 1883, and not later, as the collection papers of the subsequent period were fabricated and could not be trusted. The position then is that rent is shown to have been paid not later than 1883. Under the circumstances it was clearly open to the Settlement Officer to hold that no rent was proved to have been payable in 1909 when the Record of Rights was made. It is, we think, impossible to hold that the entry made by the Settlement Officer is erroneous and should be amended. In the third group are comprised 36 suits, where the Subordinate Judge has arrived at an extraordinary conclusion. He has held that the evidence indicates that the entries made in the Record of Rights are erroneous, but that the plaintiffs are not able to establish how the entries should be amended. He has overlooked that the burden of proof in these cases was entirely upon the plaintiffs. The Record of Rights is *prima facie* correct; but, besides that, the plaintiffs as plaintiffs have to establish their allegations. They seek a particular declaration. If the evidence they adduce is not sufficient to enable the Court to

hold that the declaration they seek should to made, the only course open is to dismiss the suits. We are unable to appreciate how any decree of the kind made by the Subordinate Judge could possibly have been made. The result of the decree is that the whole matter is left in uncertainty; the Record of Rights is pronounced to be incorrect; but the Subordinate Judge is not able to specify how the entries in the Record of Rights should be amended. In a suit u/s 106 of the Bengal Tenancy Act, the plaintiff is not entitled to a declaration that a specific entry in the Record of Rights is not correct as it stands; he must go further and establish in what respect it is incorrect and how it should be amended; if he is unable to do this, his suit must fail. Our conclusion is that in the cases where the Subordinate Judge has reversed or modified the decree of the Court of first instance his decree cannot be supported.

10. The result is that Appeals Nos. 1211 and 2007 to 2037 of 1913 are dismissed with costs; Appeals Nos. 1318 to 1384 of 1914 are allowed and the decision of the First Court in each case is restored with costs of all the Courts. We assess the hearing fee in this Court in each case at rupees eight only.