
(1926) 03 CAL CK 0037
In the Calcutta High Court

Fazlar Rahman Biswas and Others

APPELLANT

Vs

Golam Kader Mia and Others

RESPONDENT

Date of Decision : 18-03-1926

Acts Referred:

Citation : AIR 1926 Cal 862

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

Bench : Full Bench

Judgement

B.B.Ghose, J.—These appeals arise out of three suits brought for recovery of possession of different plots of land. The suits were dismissed by the trial Court. On appeal by the plaintiffs, the Subordinate Judge has reversed the decision of the Munsif and has decreed the suits. The defendants appeal before us and the only point argued on their behalf is that the presumption under the record-of-rights u/s 103B of the Bengal Tenancy Act does not arise in these cases.

2. What happened was this: The Subordinate Judge held that these plots of land according to the Cadastral Survey did not appertain to the defendant's holding, but appertained to the holding of the plaintiffs. It was contended before him by the defendants that the plaintiffs had got other co-sharers who were necessary parties and that the plaintiffs could not claim the entire interest in the plots in question. With reference to this contention, the learned Subordinate Judge observed as follows:

The Settlement records fully support the plaintiffs and the presumption arising from the same in their favour has been supported by the testimony of P.W. 6, Khandkar Altapar Rahman, one of the alleged co-sharers. It is not improbable that there was an arrangement between the plaintiffs and their co-sharers by which the plaintiffs got the three plots in question in their exclusive possession.

3. Upon that finding he passed decrees in favour of the plaintiffs. The argument addressed before us is based upon the provisions of Section 147B of the Bengal Tenancy Act and it is, first, contended that the entry in the record-of-rights is

only evidence in a suit between landlord and tenant as such and cannot be used as evidence in a case between tenant and tenant. This argument is based upon a note in the 5th Edition of Mr. Sen's well-known work on the Bengal Tenancy Act. This argument, in my opinion, has the merit of novelty, because it is well known that the record-of-rights has been used as evidence--and it has been of frequent occurrence--in a case between one tenant and another with regard to possession of property. Nevertheless, when this objection has been raised, it should be properly dealt with.

4. It seems to my mind that Section 147B of the Bengal Tenancy Act has not the effect which it is urged it has upon the provisions of Section 103B of the Act. Section 147B provides that the civil Court shall have regard to the entries in the record-of-rights relating to the subject-matter in dispute in all suits between landlord and tenant as such. This provision is certainly not in limitation of the provisions of Section 103B which enacts that the entry in the record-of-rights shall be presumed to be correct unless it is proved by evidence to be incorrect. Section 147B simply says that the Court shall have regard to the entries in such record-of-rights. The expression "shall have regard" ordinarily means "shall consider as of value or of importance"; but certainly the provision in this section does not mean that the Court will not presume the entries to be correct until the contrary is shown. This section, 147B, was inserted in the Act by the Amending Act I of 1907 and it seems to me that it was inserted as a matter of abundant caution directing the attention of the Court to the fact that, in all suits between landlord and tenant, the entries in the record-of-rights should be taken into consideration. What the legal effect of such entries is must be held to be provided u/s 103B of the Bengal Tenancy Act.

5. It might, however, be argued on behalf of the appellants that the record-of-rights having been prepared under Chap. X of the Bengal Tenancy Act, which is an Act, according to its preamble, to amend and consolidate certain enactments relating to the law of landlord and tenant, should not be used as evidence in a case which is not one between landlord and tenant. But it is quite clear that the provisions of that chapter are of wider application than merely to questions between landlord and tenant and cannot be limited to suits between landlord and tenant only. It may also be pointed out and, in fact, this has been conceded, that it being a public record prepared by public officers appointed under the statutory authority of the Local Government is admissible u/s 35 of the Evidence Act. It is argued, however, that, although it is admissible u/s 35 of the Evidence Act, there is no presumption about its correctness. With regard to that contention, the answer seems to be that, where an official act has been done within the jurisdiction of the public officer, the record will have a presumptive value of its correctness. In the case of *Rai Bhaiya Dirgaj Deo v. Beni Mahto* 22 C.W.N. 439. Lord Parker of Waddington, in delivering the judgment of the Judicial Committee, observed with regard to a register of Minhaidari villages as follows:

Now, clearly the register is an official document and, therefore, it is admissible in

evidence u/s 35 of the Indian Evidence Act. It may be possible that, in the case of such a document, if it could be shown that any particular part was in excess of the official duty by reason of which it came into existence, that part might not be admissible; but no attempt has been made to show this in the present case. The document has been admitted by both the Courts below as proper evidence in the case and their Lordships see no reason to reverse or to vary that decision:

6. In the present case there is no doubt that u/s 102, Clause (a) of the Bengal Tenancy Act, it was the duty of the Settlement Officer to record the name of each tenant or occupant. In case of mistake, a suit might have been brought u/s 106 to correct the record-of-rights where the land had been recorded as part of a particular estate or tenancy. Therefore, it is admissible and there is a presumption as to its correctness. I may also add that the record-of-rights has been admitted as evidence and a presumption has been raised as regards its correctness in the case of *Raja Sasi Kanta Acharjee Bahadur v. Sandliyamany Dassya* 26 C.W.N. 483. In that case, the Bengal Tenancy Act did not apply to the property with regard to which the record-of-rights had been made. The Chief Justice in delivering the judgment of the Court, said:

I am not prepared to go so far as to say that in this case no presumption arose from the entry in the record-of-rights; but I am prepared to say that the presumption cannot be of such great weight as would be the case if the entry were with regard to matters which are rightly and properly included in the record-of-rights.

7. In the present case, the Subordinate Judge has relied on the presumption in favour of the plaintiffs and also on the evidence which supports that presumption. It has been held in two cases in the Patna High Court, namely, the cases of *Bibi Wakilan v. Deo Nandan Prosad* [1920] 5 P.L.J. 681 and *Mazharul Ekbal @ Muna Mia and Another Vs. Raja Gopal Lal Ray Bahadur and Another and M. Mariamun Nisa and Others*, that an entry in the record-of-rights operates in the same way between landlord and tenant as between landlords of the same or neighbouring estates and between tenant and tenant. I do not see any reason to differ from that conclusion. There are several cases of this Court, to some of which our attention was drawn by the learned vakil for the respondents, namely, the cases of *Sheikh Barkat Ali v. Basant Nunia* 21 C.W.N. 175 and *Gajadhar Prosad v. Sheo Nundan* 23 C.W.N. 304, in which this presumption of the record-of-rights was applied in cases of disputes between tenant and tenant. This argument of the appellants, therefore, fails. The result is that the decrees of the appellate Court are confirmed and these appeals are dismissed with costs.

Graham, J.

8. I agree. Section 103B, Sub-section (3) of the Bengal Tenancy Act has, in my opinion, been in no way limited or restricted by Section 147B of that Act. If the intention of the Legislature had been that the operation of that section should be limited to cases between landlord and tenant, that intention would have been

clearly expressed. The words of Section 103B (3), as they stand, are plain and unqualified and I do not think that we ought to read into them a meaning which they do not express. Section 147B was an amendment made in 1907 and the circumstances in which that amendment came to be made are explained in the notes on the clauses of the Bill where it was stated as follows:

The proposed Section 147B is intended to define more clearly the force to be attached to entries in the record-of-rights in proceedings and suits between landlord and tenant as such. Under the present Act, such entries are presumed to be correct until the contrary is proved. But cases have occurred which indicate that it is doubtful whether the Courts pay sufficient attention to this presumption. It is proposed, therefore, to provide that the Courts shall have regard to the entries in the record-of-rights unless such entries have been proved by evidence to be incorrect, and that when a Court passes a decree at variance with such entries, it shall record its reasons for so doing,

9. Clearly, therefore, the amendment was not intended to qualify in any way the law as it already stood. The object in view was merely to invite the attention of the Courts to the necessity of having regard to the entries in the record-of-rights. I agree accordingly with my learned brother that these appeals must be dismissed with costs.