
(1910) 06 CAL CK 0001
In the Calcutta High Court

Ghanashyam Misser

APPELLANT

Vs

Kumar Kalanund Singh and Another

RESPONDENT

Date of Decision : 01-06-1910

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50

Citation : 6 Ind. Cas. 790

Hon'ble Judges : Sharf-ud-din, J;Holmwood, J

Bench : Division Bench

Judgement

1. This second appeal arises out of a judgment and decree of the Special Judge on an order by the Settlement Officer in a case u/s 105 of the Bengal Tenancy Act. The case clearly raises a question of status and we, therefore, held at the outset that a second appeal would lie. There were numerous tenants against whom the plaintiff sought for a determination of fair rent in the lower Courts. The defendant No. 19, however, is the sole appellant before us. The first objection taken before us is that the lower appellate Court's judgment is not according to law. We are unable to see this. He sets out generally the points for decision and deals with all the cases either in batches or separately. He deals with the case of defendant No. 19 separately, though not so fully as was done by the Settlement Officer; but in a judgment of affirmance this is not necessary. The learned Settlement Officer has dealt with the case of each defendant or batch of defendants separately. He finds that defendant No. 19 was a tenure-holder and not a ryot but it is urged in appeal that the documents on the record show that the Buneli Raj has always treated the defendant as a cultivating tenant.

3. It appears that the defendant No. 19 was holding a jama at the rental of Rs. 72-7 in the year 1256 Fasli-184i9, which contained an area of 541 bighas, 13 cottahs. After the year 1206 this tenure was divided into two jamas, of 466 bighas, 13 cottahs and 75 bighas, the former at Rs. 57-7, the latter at Rs. 15, and these continued to be so held till 130D Fasli. Another jam a was crea&ed as found as a fact by the lower Courts in 1284 consisting of 50 bighas, 8 cottahs at

a rental of Rs. 5-2 and we must take it as concluded that this jama was not in existence prior to that date. The learned Settlement Officer h8KI and his findings have been affirmed by the Special Judge that these three jamas were consolidated into one in the year 1300 or 1301 and reliance is placed on the testimony of defendant's own witness No. 5. The Settlement Officer says: It has been sought to be proved that this was no amalgamation but the evidence on this point is overwhelmingly in favour of the plaintiff. The plaint and decree in the rent suit of 1894-95 is relied on in this connection. In that plaint the details of the three jotes are given and it is contended that the landlord was entitled to sue for the rent of these separate jotes in one suit. But in a later suit in 1305, the rent of the whole area was sued for without any mention of the 3 jamas and in the record-of-rights a single tenure at a jama of Its. 77-9-0 is recorded. It is objected that this was done without the defendant's consent but the Settlement Officer points out that his conduct negatives this. He could have objected to the amalgamation in the two Civil Suits (or rather in the Civil Suit of 1305) as well as u/s 103A, Bengal Tenancy Act, after the draft record-of-rights was published and the Court below, therefore, holds that there was an amalgamation and one of the tenures constituting the tenure having been created since the Permanent Settlement. The tenant cannot claim the presumption u/s 50(2), Bengal Tenancy Act. Reliance is placed on the case of *Moula Buksh v. Jadoonath Sadoo* 21 W.R. 267. That case is clearly an authority for the finding of the lower Courts. But it is sought to be got over by an ingenious argument that Section 50 Clause (3) is purely redundant and cannot exclude a tenure from the benefit of Clause (1).

4. It may have been inserted as Lord Herschell has remarked is frequently done in English Acts of Parliament, *Ex Majore Cantela*. To take away the presumption from tenure-holders would amount to confiscation.

5. But the answer to this is that the rent of both, ryoti-holdings and tenures can be enhanced under Clause (1) on the ground of an alteration in the area of the tenure or holding and Clause (3) gives a special concession to ryots excepting from this rule such alterations as are made by the landlord and themselves by agreement either by way of splitting up or amalgamation.

6. There appears to be no reason why this concession should apply to tenure-holders when the law does not give it, and Couch, C.J., was clearly of opinion that under the Tenancy Act of 1869 no tenants could after amalgamation claim the presumption which is now given by Section 50, if the holding was shown not to have been held in its entirety since the Permanent Settlement. The Bengal Tenancy Act appears to incorporate this rule of law into Section 50 and then proceeds to make a special exception in favour of ryots.

7. But there are two other questions raised in this appeal one, as we have already indicated, as to the omission of the lower Courts to consider certain documentary evidence as showing that there were really ryoti-holdings, the other as to the effect of Section 188, Bengal Tenancy Act, on the plaintiff's suit.

8. As to the first point, we think that the use of the words "cultivating tenants "in the documents cannot help the defendant. The lower appellate Court clearly finds that in his case a portion of holding was cultivated by Kolaito, that is, cultivating tenants and" of late years, a single amanat receipt has been accepted and we cannot go behind the findings of fact of the lower Courts on this point. As regards Section 188, for the. purposes of that Section a ticcadar is a landlord, or in any case the agent of the landlord authorized to act in the landlord"s interests.

9. The plaintiffs are proprietors of 8 annas of the estate and lease-holders of the other 8 annas from their own cousins and co-sharers.

10. There can be doubt as to their right to sue for a fair rent.

11. Finally we find that the presumption raised by the record-of-rights is in no way rebutted. The receipts produced are granted by a mortgagee and by an unknown person, named Shosidhar Choudhry Mustagir. Their statements have little or no evidentiary value against the plaintiff. The Settlement Officer went out years after the date of these receipts and found the tenure being cultivated by numerous tenants of the defendant.

12. The appeal, therefore, fails on all these grounds and must be dismissed with costs.