

(1944) 06 CAL CK 0012

In the Calcutta High Court

Case No : Appeal from Original Decree No. 663 of 1939

Gobinda Chandra Banik

APPELLANT

Vs

Swarnamayi Rudra Pal and Others

RESPONDENT

Date of Decision : 14-06-1944

Acts Referred:

Citation : (1944) 06 CAL CK 0012

Final Decision : Allowed

Judgement

Mukherjea, J.—This appeal is on behalf of the Plaintiff and it arises out of a suit commenced by him to recover khas possession of a five-anna share of the lands described in the schedule to the plaint on establishment of his patni rights to the same. The material facts are not in controversy and may be shortly stated as follows: The Appeal from Original Decree No. 663 of 1939 against Plaintiff's case is that the lands in dispute which are situated in mouzahs Rajiura and Barabari appertain to a revenue-paying estate known as Taluk Haidar Hasan, bearing number 5650/2 of the Sylhet Collectorate. There was a separate account (being separate account No. I) opened in respect of a five-anna share of the taluk in the name of Ramkumar Deb sometime in the year 1880. This separate account was sold for non-payment of revenue as well as of local rates on September 24, 1923, and it was purchased by one Abdul Sattar, who is pro forma Defendant No. 118 in this suit. In September, 1927, Abdul Sattar sold his share in the lands of eight mouzahs comprised in taluk Haidar Hasan to Kifatulla and in March, 1928, Kifatulla granted a patni settlement of the lands of two out of these eight mouzahs, namely, mouzahs Rajiura and Barabari, to the present Plaintiff. The Plaintiff avers that the plots described in the schedule to the plaint numbering 133 in all, of which plots Nos. 1 to 126 are situated in Mouza Rajiura and the rest in Mauza Barabari appertain to the taluk Haidar Hasan and are included in his patni grant. As the Defendants kept him out of possession of these properties, the present suit was instituted. There were as many as 137 Defendants in the suit, including the pro forma Defendants Nos. 118 and 119, but the suit was contested mainly by Defendant No. 67 and many of the remaining Defendants

claimed tenancy rights under her. We are not concerned with the various pleas taken in the written statement of Defendant No. 67 for our present purposes. The only defence which is material for purposes of this appeal is that the majority of the lands in suit do not belong to taluk Haidar Hasan but really appertain to five other taluks or tenures which belong to Defendant No. 67. These other taluks are taluks Nos. 66508/2, 56509/3, 56506/1, 56534/13 and 56653/87 (Taluk Abchand Bibi). The trial Court on consideration of the entire evidence gave the Plaintiff a part decree. His claim was allowed with regard to all the seven plots which are situated in mouzah Barabari and he was declared entitled to recover possession of the same. With regard to the 126 plots of mouzah Rajiura, the Plaintiff's title was declared in respect of 9 plots only, to wit, plots Nos. 3, 20, 21, 86, 87, 98, 105, 106 and 119, and he was given a decree for khas possession of all these plots with the exception of plot No. 119 with regard to which the Defendant No. 11 was held to have a protected interest. The Plaintiff took an appeal against this decision to the Court of the District Judge of Sylhet. The learned District Judge affirmed the decision of the Court below with slight variations. The Plaintiff was given a decree with regard to one other additional plot, namely, plot No. 102 and it was further directed by the Appellate Court that the compromise entered into between the Plaintiff and some of the other Defendants which was not recorded by the trial Judge should form part of the decree. Subject to these modifications, the appeal was dismissed. It is against this judgment of the District Judge of Sylhet that the present second appeal has been preferred by the Plaintiff.

2. It may be stated at the outset that the Plaintiff relied mainly, if not entirely, upon the thakbust map and statement for the purpose of proving that the disputed lands appertained to taluk Haidar Hasan. The thak was relaid by a pleader commissioner and his report is that with the exception of plot No. 34 all the remaining plots do appertain to the thak chaks of taluk Haidar Hasan. The District Judge has subjected the thak: map and the thak records to a most critical examination and his conclusion is that in this particular case whatever presumptive value could attach to the thak papers has been amply rebutted by a mass of evidence that has been adduced on the side of the Defendants. The evidence on the Defendants' side included inter alia a number of chittas (Ex. A series), and kobalas (Ex. K series) showing that the lands were dealt with and possessed as parts of the other taluk, a potta (Ex. H2) granted to Abchand Bibi, the mouzawari register (Ex. M) and tain judgments and decrees (Exs. O and Q series) in two suits brought by Ram Kumar Deb, the original owner of Separate Account No. 1 and another person against Bishnu Prosad Choudhury, husband of Defendant No. 67.

3. Dr. Sen Gupta, who appeared in support of the appeal, has raised the following points for our consideration: He has contended in the first place that the learned District Judge erred in law in not attaching due weight to the thak survey and map and the considerations which induced him to ignore their presumptive value are legally unsound and unwarrantable. It is contended in the second place

that most of the documents upon which reliance has been placed by the Defendant No. 67 in support of her case were not duly proved in accordance with the requirements of law and were improperly received as evidence. The third ground taken is that as the lands in suit were sold not merely for arrears of revenue but for arrears of local rates as well under the Local Rates Regulation all the lands which were assessed to these local rates would pass by the sale, irrespective of the fact as to whether they appertained to taluk Haidar Hasan or not. It is argued in the next place that the learned District Judge should have, on his findings, given the Plaintiff a decree with respect to those portions of plots Nos. 120 to 122 which were found to be within the thak by the pleader commissioner and with regard to which the Defendant No. 133 failed to establish his title. The last ground taken is that there should have been a decree for khas possession as against Defendant No. 11 in respect of plot No. 119 inasmuch as there were no materials on the record upon which the learned Judge could come to the conclusion that the sepatni interest of Defendant No. 11 was a protected interest within the meaning of sec. 71 of the Assam Land Revenue Regulation.

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[His Lordship overruled the first and second contentions and proceeded as follows:]

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4. We now come to the third point put forward by Dr. Sen Gupta and his argument is that even if the lands in suit do not appertain to taluk Haidar Hasan, they were certainly assessed to local rates under the Local Rates Regulation and consequently did pass to the auction-purchaser when the sale was not on account of default in the payment of revenue alone but for non-payment of arrears of local rates as well. This contention, though plausible at first sight, does not seem to us to be at all of any substance. In our opinion, Mr. Das is right in his contention that the local rates are an additional liability imposed upon the landholder who owns an estate according to the Assam Land Revenue Manual and what is put up to sale for non-payment of local rates is the estate itself which is saddled with the payment of Government revenue. Sec. 3 of the Local Rates Regulation lays down that all land shall be liable to the payment of such rates in addition to land revenue and local cesses, if any, assessed thereon, as the Chief Commissioner from time to time directs. Land, according to sec. 2, means land which is or but for some express exemption would be assessable to land revenue. Sec. 7 shows that the land-holder is required to furnish information previous to the assessment of local rates. There are no provisions in the Assam Law corresponding to those contained in the Public Demands Recovery Act in Bengal and for non-payment of arrears of local rates, the only procedure that is followed is to put up the property itself to sale and we think that it is perfectly clear that by property is meant an estate which bears Government revenue and the owner of which is liable to pay local rates as an additional imposition. We think further that it will not be necessary to enter into

a detailed discussion regarding this matter. The purchaser at a sale for non-payment of revenue or of local rates cannot have any higher right than what the sale-certificate itself purports to convey. We find from the sale-certificate that only Separate Account No. I of taluk Haidar Hasan was put up to sale and even if we assume that the other lands which were not included in this taluk were also assessed to local rates, the purchaser as we have said above, cannot claim anything more than what was actually exposed for sale. We cannot therefore accede to this contention of Dr. Sen Gupta.

5. Now, so far as the fourth point is concerned, it is true that some insignificant portions of plots Nos. 120 to 122 were held to be within the thak by the pleader commissioner. Defendant No. 67 does not lay any claim to these plots and it was claimed by Defendant No. 133 as appertaining to his tenancy under other talukdars. The District Judge says that his document of title was not relaid but having regard to the small fraction of land which is the, subject matter of dispute and relying on the evidence of possession he did not think it worthwhile to allow this land to the Plaintiff. There may be some substance in the contention put forward by Dr. Sen Gupta that unless the document of title set up by Defendant No. 133 is properly relaid and the land is held definitely to be included within it, there could be no objection whatsoever to the Plaintiff's claim which should be allowed to succeed. But there is one difficulty which lies in the way of the Plaintiff's claim: although Defendant No. 133 has been made a party to this appeal yet no such ground with regard to plots Nos. 120 to 122 has been taken in the memorandum of appeal. As Defendants No. 133 has not appealed we do not think it would be right to decide this point in his absence, and for a very minute quantity of land we do not think it proper to set aside the decision of the Court of appeal below on this point.

6. There remains for us to consider only the last point raised by Dr. Sen Gupta. Now, so far as plot No. 119 is concerned, the District Judge, in declaring the title of the Plaintiff, has dismissed his claim for khas possession on the ground that Defendant No. 11, as a sepatnidar, enjoys a protected interest in this plot under sec. 71 of the Assam Land Revenue Regulation. Now, sec. 71, first, cl. (6) speaks of an estate or tenure created bond fide and on a rent not less than the full amount of revenue fairly payable in respect of the land and such interest only is protected under that subclause. We agree with Dr. Sen Gupta that there are no materials on record which would enable us to say that the requirements of this clause have been complied with. The sepatni rent may be less than the total revenue assessed on the taluk but we have neither the patni potta showing the rent that was reserved by it nor are we in possession of any facts which would go to show the proportionate revenue payable in respect of this land. We think therefore that this part of the judgment of the Court of Appeal below should be set aside. While we affirm the decision of the District Judge on all the other points we send the case back to him so that this point and this point alone may be reconsidered. The District Judge would, on a consideration of the evidence on the record and on such other and further evidence as he might think fit to allow

the parties to adduce, decide this question as to whether Defendant No. 11 has got a protected interest in plot No. 119 within the meaning of sec. 71, first, cl. (6) of the Assam Land Revenue Regulation. The result therefore is that the appeal is allowed only so far as the decision of the Court below in respect of plot No. 119 is concerned and is dismissed with regard to all the other points. The judgment of the Court of Appeal below is set aside only so far as it concerns plot No. 119 and is affirmed with regard to the rest. The District Judge will consider the question of protected interest with regard to plot No. 119 in the light of the observations made above.