
(1937) 03 CAL CK 0013
In the Calcutta High Court

Gopi Mohan Jeo Thakur and Others

APPELLANT

Vs

Bepin Behari Bhakat

RESPONDENT

Date of Decision : 17-03-1937

Acts Referred:

Evidence Act, 1872 — Section 18

Citation : AIR 1937 Cal 371 : 173 Ind. Cas. 358

Hon'ble Judges : Jack, J

Bench : Division Bench

Judgement

Jack, J.—This appeal has arisen out of a suit for a declaration that the properties described in the plaint and forming an eight anna share of mouza Baitalpara and shares of other mouzas were valid debuttar properties of Gopinath Jew Thakur the family deity of plaintiff 1, and defendants 2 to 8 added as plaintiffs and for a permanent injunction restraining defendant 1 from bringing the properties to sale in execution of a money decree obtained against plaintiffs 2 and 3. Plaintiffs' case is that the disputed properties were the absolute debuttar properties of their family deity and were in possession of Utshabananda Goswamin plaintiffs' ancestor as the managing shebait when they were resumed by the Government under Regn. 2 of 1819. The property in mouza Baitalpara containing 100 bighas of nishkar land was resumed and subsequently settled with the Maharaja of Mayurbhanj, who granted a sanad to Utsabananda, the plaintiffs' ancestor on recognizing the property as debuttar property of the deity and since then all the usufruct of the property has gone to the performance of the sheba and puja by the plaintiffs' ancestor and finally by the plaintiffs. Hence they are not liable to be sold in execution of the money decree taken by defendant 1 against plaintiffs 2 and 3. Defendants' case is that the properties were all along secular properties of Goswamins, and the plaintiffs were the owners thereof; and that therefore they are liable to be sold in execution of the decree of the defendant. The trial Court decreed the suit, but the suit was dismissed in the Court of appeal below. The only property in respect of which this appeal has been pressed is the property of mouza Baitalpara.

2. The main contention on behalf of the appellants is that the lower appellate Court was influenced against the plaintiffs' case by an erroneous view as to the effect of the resumption proceedings, namely that by the resumption proceedings the original nature of the tenancy was changed and that in fact the land which was admittedly inalienable debuttar before the resumption proceedings remained so throughout. In support of the contention that the resumption proceedings did not affect the tenancy, reference was made to the case in *Jugal Charan Mondal v. Rai Deyendra Nath* (1931) 63 C L J 593. This ruling merely shows that there was no intention in the resumption proceedings to dispossess the holders of invalid lakhiraj but rather to assess them to revenue where the land exceeded 100 bighas or to rent under the proprietors of the estate within whose boundaries they were included where the area was less than 100 bighas. In this case the area was 100 bighas and apparently this village was included in the estate of Maharaja of Mayurbhanj as according to the lower appellate Court Utsabananda Deb did not appear and file any statement. It appears that under the Regulation, the Government would automatically settle this with the original tenants but in a case like this where a previous holder did not appear there Government would not be bound to settle the land with the original holders and it would be left to the owner of the estate within which the lands were included to make settlement with the previous tenant.

3. In the circumstances of this case accordingly it was for the Maharaja of Mayurbhanj to make settlement as he chose. The question then was whether the settlement was in fact made with the deity, as before the resumption proceedings that land saw undoubtedly debuttar. The learned District Judge has considered the evidence as to whether such a settlement was made and he has considered the circumstances which go to show that the settlement was in fact with the deity and not a personal settlement with the predecessor of the plaintiffs. He considered the presumption arising out of the settlement records and also considered the fact that the entire income of the property was spent for the worship of the deity. The District Judge says that he is not prepared to accept without independent corroboration the statement of the plaintiff that the entire income was spent for the purposes of the deity alone. For the respondent it is pointed out that even if the income was applied for the worship of the deity, that is not conclusive evidence that the property belonged to the idol. As authority of this, the decision in *Sri Sri Gopal Jew Thakur through Narendra Nath Mondal Vs. Radha Binode Mondal and Others*, has been referred to. According to this decision the application of the income for the sheba is not conclusive evidence, though it may have an important bearing on the question.

4. Finally it is contended on behalf of the appellants that the learned Subordinate Judge has not taken into account of or given due weight to certain documentary evidence in going to show that this is a debuttar property. I find however that the learned Judge has referred to the evidence in question and evidently taken it into account, namely the Terij Ex. 8, the Chitta Ex. 9, a receipt for cesses Ex. 6, and the valuation Roll Ex. 10. No doubt he thinks that the value of these as

evidence is weakened by his doubts as to whether the Maharaja of Mayurbhanj was the founder of the debuttar. And though he refers to the settlement record merely as corroborative evidence it is clear that the finding amounts to one that the presumption arising from the Record of Rights has not been rebutted by the documentary evidence and by the evidence that the income was entirely spent for the worship of the deity. It is true that he does not refer to the Suit Register Ex. 11 which shows that in 1888 a suit was brought in the name of Sri Gopi Mohan Dev for the value of paddy taken by defendant. This is undoubtedly admissible u/s 18, Evidence Act. It is not however referred to in the grounds of appeal and because no reference to it is made in the judgment of the lower appellate Court it does not follow that the Judge did not consider it; and that if it had been considered it would have affected the decision which is an inference of fact from the facts found and cannot be interfered with the second appeal on the ground that the Court did not give due weight to the evidence.

5. There is a good deal of force in the Judge's remark that whereas all the other mouzas in suit have been recorded in the name of the Thakur, in the Record of Rights no explanation has been given as to why this particular mouza was recorded as a personal property of the shebait. The only explanation offered is that as the mouza was resumed the settlement officer was misled by thinking that the resumption necessarily destroyed the original nature of the tenancy. Certainly I think that it does not necessarily follow that the tenancy is the same after the resumption, and the Record of Rights shows the existing state of things after resumption. It is true that in Col. 2 of the Record of Rights the tenure is described as debuttar. This has also been taken into account by the learned Judge, and even though he may not have placed a correct construction on the documents exhibited that would not entitle this Court to interfere in a second appeal. The appeal is really concluded by the findings of fact since it has not been shown that there has been any mistake in law. It is accordingly dismissed with costs.