
(1908) 07 CAL CK 0028
In the Calcutta High Court

Haider Ali Sikdar

APPELLANT

Vs

Secretary of State and Others

RESPONDENT

Date of Decision : 08-07-1908

Acts Referred:

Citation : 4 Ind. Cas. 49

Hon'ble Judges : Stephen, J;Holmwood, J

Bench : Division Bench

Judgement

1. This is a second appeal from the judgment and decree of the District Judge of Chittagong upholding the decision of the Subordinate Judge and dismissing the plaintiff's suit with costs. The facts of the case are sufficiently set out in the judgment of the lower appellate Court but may be briefly summarised as follows: There was a Noabad Taluk known as Taluk Bibi Sparkes which was settled for a term of 30 years in 1836 with two persons named Kalu and Kamar Ali. It then consisted of 103 drones, 8 kamis and 12 gundas of land with a rental or revenue of Rs. 174-0-2. In the rubkari of 1836 a small Taluk of 4 or 5 bighas known as Taraf Bibi Isfag is referred to as measured and settled with other properties in 1150 M.E., 1162 M.E., and 1182 M.E., that is in 1788, 1800, and 1820. There is, however, nothing to show that this was the same taluk and it has not been contended that it is. The case is in this respect on all fours with the Ramoo case; Prosunno Coomar Roy v. The Secretary of State for India in Council 26 C. 792; 3 C.W.N. 695 as well as in every other respect as we shall presently show. In 1881 a survey officer, Mr. Fasson, measured the Taluk and found 13 bigahs odd in excess and this was made into a separate taluk called the Gunjais taluk and settled with one Fazar Ali for 17 years. The 30 years' settlement of Taluk Bibi Sparkes was extended to 50 years, early in the tenancy and must have subsequently been settled for another 10 years as it appears in the record to expire in 1196. Upon a survey made as far as the taluk now in dispute and the Gunjais taluk are concerned, in the year 1891 it was found that 54 drones odd appertained to Taluk Bibi Sparkes, Gunjais had become 26 drones odd and the rest was, as would appear from the note in the record-of-rights of 1895,

comprised in uncultivated hills. This is, however, disputed and we shall have to deal with this dispute later on. Be that as it may, the finding of fact by the lower appellate Court is that Taluk Bibi Sparkes was re-settled for a term of 30 years with area 54 drones odd and rental Rs. 435-14-0 with the talukdars Abdul Ali Serang, Amir Hossein and Sarat Chandra Chowdhury on the 27th February 1895. It does not appear that they were in any way the successors in title of Kalloo and Kamar Ali, the 50 years settlement-holders and they are described in the list of tenants in the settlement record as having a temporary intermediate right. They must presumably, therefore, have been the persons with whom the intermediate temporary settlement for ten years was made. Abdul Ali and Amir Hossein sold these two-third share in the old taluk of 103 drones odd with revenue Rs. 174 odd by a deed of sale dated November 1895. The re-settlement having been made in February 1895 and the final record-of-rights published in April 1895, it is one of the questions in the case whether the taluk of 103 drones any longer existed, The other one-third of the taluks was purchased at a Civil Court auction sale by the plaintiff in 1900 and this is clearly described as one-third of the taluk of 54 drones odd at a rental of Rs. 465 odd. Plaintiff says he was dispossessed in August 1896 by the, defendants Nos. 2 to 10 who instigated the other defendants the tenants not to pay rent to him. The learned Sub-Judge in the first Court dismissed the plaintiff's suit on the sole ground that he had been unable to identify the lands as part of the original taluk of 103 drones odd. Had this still been the only ground for dismissing this case, we might have been disposed to remand it as it is clear that on the plaintiff's petition to the Collector an Amin was deputed in 1899 who found pro-tanto in the plaintiff's favour--although by the plaintiff's own laches this investigation was infructuous and he himself objected to the Amin's report. We find the Collector rejected the application in 1901 without assigning any reasons and this is "what the plaintiff alleges is his cause of action. We may, however, refer to the case of Himmut Singh v. Collector of Bijour 2 Agr H.C.R. 258 where it was held that the Collector has no power in subsequent years during the pendency of a completed settlement to interfere with the arrangement of the Settlement Officer. This may have been an adequate ground for the Collector staying his hand. But the learned Judge in appeal has found against the plaintiff on the further grounds of the finality of the settlement of 1895, limitation by 12 years, 6 years and 1 year and estoppel. We need not consider the 1 year's limitation nor the estoppel. Both the lower Courts have looked exclusively at the record-of-rights and not at the fact of settlement under the Regulations. We agree with the Subordinate Judge that this is not a suit to set aside any proceedings under the record-of-rights and though the presence of the plaintiff's predecessor's agent may be evidence that his predecessor had notice of the re-settlement, it does not operate as an estoppel on the plaintiff. The question of 6 years' limitation is involved in the validity, of the settlement of 1895. If this case falls within the law as laid down in Prosunno Coomar Roy v. The Secretary of State for India 26 C. 792; 3 C.W.N. 695 the Rammo case already referred to, as we think it does, the suit is barred by six years' limitation, on the authority of that ruling, but the point is immaterial as, if there

was a valid re-settlement of Taluk Bibi Sparkes in 1895. on the basis of a reduced area and an increased rent, the plaintiff has no cause of action. The three findings of fact that we find preclude us from interfering in second appeal are: 1. That the re-settlement for 30 years was made with an area of 54 drones odd: 2. That the plaintiff has not been able to identify the land in dispute with any part of Taluk Bibi Sparkes: 3. That as a matter of fact none of the lands in dispute have formed any part of Taluk Bibi Sparkes since at least 1881 and that they have been in the adverse possession of defendants Nos. 2 to 10. As regards the first point the entry in the column of the record-of-rights that the tenure was under the temporary settlement for 30 years from the 1st of Byask 1303 to the 30th Cheyt 1331 is conclusive evidence that the settlement was made duly under the Regulation. The plaintiff's learned Counsel, however, impugns this on the basis of the Settlement Officer's note that the talukdar was not present at the settlement and that the Regulation provides that the talukdars and other persons interested must have due notice and that they are entitled as of right in Noabad taluk to have resettlement made with them. There are many answers to these contentions but the most conclusive are that the talukdars had notice and that their agent is found as a fact to have been present watching the proceedings throughout. The survey began in 1889. It was completed so far as the lands in dispute in this case are concerned in 1891. The record-of-rights was then drawn up and must have been published according to law. It is only at the time of passing final orders on the 27th February 1895 that the talukdar does not appear. This does not in any way infringe the Regulation or make the settlement other than a good settlement. The second conclusive answer to the objection is that a temporary settlement-holder especially an intermediate holder for ten years is not entitled to settlement of the same area at the same rate though he may have a preferential right to the fresh settlement the Government makes at the expiry of the old settlement. In this case the area had gone into other estates rightly or wrongly and plaintiff had three years to sue if he had any objection to the settlement itself. It does not appear that there was any Civil Court proceeding at any time. Plaintiff made a speculative purchase from Abdul Ali and Ahmed Hossain of a taluk which had not been settled with them and in the case of Sarat Chandra he bought 1/3rd of the existing taluk as settled in 1895 with his eyes open. It is here that the incidental question comes in as to plaintiff's application to withdraw with permission to bring a fresh suit. It appears that some of the parties with whom Government has settled some of the lands claimed as part of the old taluk, are not parties to this suit and the Secretary of State cannot be asked to restore what has been given on a good title to other persons who are not before us. The same prayer was made in the lower appellate Court and was, we think, very properly rejected. On the first finding of fact, therefore, we hold that the settlement of 1895 was a good settlement and cannot now be impugned. The plaintiff has, therefore, no cause of action. As regards the identity of the lands and the adverse possession of defendants Nos. 2 to 10 both these points are matters of fact and the facts found by the lower appellate Court clearly conclude the appellant. It does not appear

what the facts are as to defendants Nos. 3 and 5 to 10 who did not contest the suit; but as regards defendants Nos. 2 and 4 who, we may take it, represent defendants Nos. 2 to 10 the findings are that they have established their adverse possession at least since 1881, Their case is that in 1873 their predecessor executed a kabuliyat in favour of plaintiff's predecessor Fazar Ali for 30 drones of land. This kabuliyat admittedly covered the lands in suit but it is denied that they were in Taluk Bibi Sparkes. In 1878 they were declared to belong to taluk Gunjais or to the khas property of Government. So far as they were under-tenure-holders in Gunjais taluk they could not claim adverse possession against the plaintiff who purchased Gunjais taluk but they are at liberty to show and do show according to the findings of both Courts that the lands in dispute are not identified with any portion of the original Taluk Bibi Sparkes. "As regards the other lands excluding the 13 drones of Gunjais taluk created in 1881 the learned Judge clearly finds that they claimed these as encroachment on Government khas lands and that they were never any part of Taluk Bibi Sparkes. Of course, if the plaintiff were able to show that they were part of the old taluk the plea of adverse possession would go; but the further finding that ho is unable to do so makes it impossible for us to interfere in second appeal. Finally with regard, to the contention of learned Counsel that the kabuliyat of 1836 gives the settlement-holders hereditary and transferable rights and that the case of Prosunno Coomar Roy v. The Secretary of State for India 26 C. 792 3 C.W.N. 695 (the Ramoo case) is distinguishable because in that case the Settlement Officer's proceedings were declared ultra vires, we may indicate that we cannot give any force to the allegations of the original settlement-holders in face of the settlement rubkari which is entirely in order and in no way ultra vires. The principles laid down in the Ramoo case, therefore, apply with greater force to this case. In this the kabuliyat given by Moulvis Kalu and Kamar Ali cannot in any way help the temporary settlement-holders Abdul Ali, Ahmad Hossain and Sarat Chandra Chowdhury or their successor the plaintiff. Applying the principles of the Ramoo case, we agree with the learned Judge that there is no legal obligation on Government to include any lands in a Noabad talukdar's tenure according to boundaries or dags of any former survey though we do not find this expressly enunciated in the judgment in that case. To hold otherwise would be to hold that what purported to be a temporary settlement was in reality a permanent one. On all the above grounds we are of opinion that this appeal must be dismissed with costs to the Secretary of State and separate cost (one set) to the other respondents who appeared.