

(1934) 08 PAT CK 0017

In the Patna High Court

Humayun Raza Choudhury and Another

APPELLANT

Vs

Mohammad Ismail Choudhury and Others

RESPONDENT

Date of Decision : 14-08-1934

Acts Referred:

Citation : AIR 1934 Patna 638

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This is a rule directed against the decision of the Subordinate Judge of the Santal Parganas on what in fact was a preliminary issue in an action which was brought before him. It would appear that the action purported to be one in which the plaintiffs claimed that the Record of Rights was wrong and that in the record their names should have been recorded as mutwallis of certain properties.

The position appears to be this. There were two brothers who were mutwallis during their lifetime. They died after the final publication of the record. The heirs or legal representatives of one are represented by the plaintiffs in the action, and the heirs or legal representatives of the other are represented by the defendants in the action. The record stood in the names of Sajjad and Zohad, the two brothers, and the record as it now stands in the form in which I have stated neither supports the plaintiffs' case nor that of the defendants.

2. It appears however that the plaintiffs being the legal representatives of Zohad (the brother who died last), claimed to have the exclusive rights as mutwallis. The two brothers, I should have stated, were entered in the record as the sixteen annas patnidars and it will be seen from what I have stated that the contesting parties claimed each an eight annas interest in this patni. It should be stated that there are a number of properties, but the ones with which we are concerned are Tauji Nos. 110-3 and 111. The other properties in the suit are Tauji Nos. 110-1, 110-2, 110-4, 110-5 and 110- R. As regards these latter properties no question arises as the learned Judge of the lower Court proposes to try the issues relating to them on the basis that the plaintiffs are proprietors or

zamindars within the meaning of Section 25(a) of the Regulation, and therefore it cannot be said that his jurisdiction is ousted by reason of the other provisions of the Regulation to which I shall in a moment refer.

3. It is said however as regards Nos. 110-3 and 111, that as the plaintiffs are merely patnidars and not zamindars or proprietors, there is no jurisdiction in the Civil Court and the Subordinate Judge has decided accordingly. If the matter had rested there, it would be impossible for this Court even to consider the question of its revisional powers, as the Judge in the Court below had jurisdiction to decide a question of law and he has decided it: whether he is right or wrong is another matter entirely. But it is said by Sir Sultan Ahmed who appears on behalf of the petitioners that the jurisdiction of the Civil Court is not ousted by the Regulation to which I have referred, that is, Regn. 3 of 1875. It is necessary to state one or two facts in order to appreciate the arguments advanced by the advocate on behalf of the petitioners and the advocate on behalf of the respondents. I have stated how the record stood at the final publication and the matter stands in the same way at this moment.

4. Whether suo motu or by reason of a petition made by the plaintiffs, the Settlement Officer proceeded to exercise his jurisdiction u/s 25 of the Regulation. He proceeded to inquire into the correctness of the record and he was incidentally asked to revise it. Now, it is quite clear that the Settlement Officer, when asked by the plaintiffs in this action to enter their names as mutwallis in the Record of Rights and revise it to that extent, came to the conclusion that it raised a difficult question of Mahomedan law and succession and therefore considered it as a matter fit for the decision of the Civil Court. It would appear that against that order the plaintiffs appealed to the Commissioner and the Commissioner expressed the same view. It would also appear that during those proceedings it was suggested that the matter should be referred as a question of law to a Civil Court, but that the plaintiffs declined to adopt this procedure. That however does not dispose of the point which I have to decide.

5. From what I have stated it will be seen that neither the Settlement Officer nor the Commissioner decided the question they are invited to decide. Now, the short argument on this question is that the jurisdiction of the Civil Court is ousted only where the Settlement Officer has made a record or finally decided some question, which decision will have the effect of a decree. Now, it is to be noted, as I have already stated, that as regards Taujis Nos. 110-1, 110-2, 110-4, 110-5 and 110-R, the Judge is proceeding in course of time to determine the issues relating thereto on the exception to Section 25(a) of the Regulation. For the moment I must go back to the earlier part of the Regulation. Section 5 provides from the date of a notification in the Calcutta Gazette "that a settlement shall be made," and not until that settlement is completed" shall a suit lie in any Civil Court established under the Bengal, Agra and Assam Civil Courts Act, 1887; and the matters which are excluded from the jurisdiction are those set out in Clauses (a), (b) and (c) of that section.

6. Then Section 5-A, makes an exception to this extent: that during the settlement if it appears to be expedient that the suit or any issue should be tried by a Civil Court, the suit may be so tried. Then we come to Section 2, the most important section which is material for the purposes of this case, which provides:

Except as provided in Section 25-A, no suit shall lie in any civil Court regarding any matter decided by any Settlement Court under these rules.

The section then goes on to provide that the decisions as also the orders of the Settlement Officers under the rules shall have the force of a decree. Now, Section 25-A is a section which provides an exception to Section 11 and is to the effect that a certain class of people, namely, zamindars or proprietors, may contest the finding or record of the Settlement Officer. But we are not concerned in this case with persons of that description, as it has been held and as I have already said, that the Court had jurisdiction to find that the plaintiffs were not-proprietors.

7. It is therefore quite dear that any rights which are given to proprietors or zamindars u/s 25-A cannot be claimed by the plaintiffs. But it must be made clear that Section 25-A is an enabling section and not a disabling section. It is an exception to Section 11 which prohibits suits in Civil Courts regarding matters decided by settlement Courts under these rules. As I have already stated, the question of whether the plaintiffs should be entered as mutwallis in the record was a question which came up before the Settlement Officer u/s 25 of the Regulation.

8. It therefore remains to be seen whether in the events which have happened (namely, the Settlement Officer and the Commissioner have refused to decide this question) the plaintiffs are precluded from raising it in the Civil Court. Had the Settlement Officer in exercising his jurisdiction u/s 25 of the Regulation come to a definite conclusion one way or the other as to whether the plaintiffs were to be recorded as mutwallis, it seems to me there could have been only one answer to the question propounded in this case, and that would have been that any suit in the Civil Court as regards that would have been prohibited. Now, it is to be noted in particular that what Section 11 prohibits is a suit regarding any matter decided by any Settlement Court.

9. The exception in Section 25-A which gives a power to certain persons to question the decision of Settlement Officer uses wider words: "to contest the finding or record of the Settlement Officer.

Now, although it has been pointed out in numerous cases, of which reference need only be made to the decision in *Balkrishna Udayar v. Vasudeva Aiyar* 1917 PC 71, that this Court in the exercise of revisional powers has no jurisdiction to interfere on a question of law or a question of fact, their Lordships of the Privy Council have been careful to point out that the exclusion of the jurisdiction of this Court applies not to any question of law or fact upon which a question of jurisdiction depends. The Settlement Officer in this case has declined to exercise

his jurisdiction.

10. Assuming that the argument of Sir Sultan Ahmed on behalf of the petitioners is correct, that exercise of his jurisdiction or non exercise of his jurisdiction depended upon the construction which he placed upon the Regulation. His decision as to whether these people are proprietors or not is not open to question by this Court. On a plain reading of Section 11, in the events which have happened it seems to me quite clear that the plaintiffs in this case are not seeking to question any matter which has been decided by a Settlement Court under the rules and, indeed, the very orders of the Settlement Officer and the Commissioners clearly show that they have declined to settle the question. The jurisdiction therefore of the Civil Court is not ousted. That refers to both Taujis Nos. 110-3 and 111.

11. But so far as Tauji No. 111 is concerned, the case is much stronger. There the plaintiffs alleged in their plaint that they purchased the proprietary interest and that their patni interest became merged in the proprietary interest. That may be so or may not be so; but it was impossible for the Subordinate Judge to dismiss the plaintiffs' case as regards Tauji No. 111 having regard to the fact that an issue had been settled in the case as to whether the interest had merged or not. Without deciding that question it was impossible for him to say that at least the case in respect of Tauji No. 111 did not come within Section 25-A of the Regulation. I have come to the conclusion at which I have arrived on a plain construction of Section 11 of the Regulation.

12. But to repeat and to make the matter a little clearer, the case as regards Tauji No. 111 stands on a different footing, because I have already said it was alleged that the plaintiffs were the proprietors and therefore in any event their case might come u/s 25-A if they established their contention.

I cannot part with this case without making some comment upon the most disgraceful state of affairs which was disclosed. The plaint was filed somewhere in 1930. The case came before the Court below on many occasions. Ultimately, on 12th September 1931, it was decided to go into this preliminary issue which has been decided by the order which is in question in this rule. The first argument heard was in January 1932, when a petition by both parties for time was granted. I refer to this order particularly, because looking through the order sheet it is found that on many occasions either one or both parties applied for time, and, as far as my reading of the order sheet goes, on no occasion was the application refused.

13. The last day of the hearing of the argument was on 11th June 1932, and yet the order in the case was not made until 23th February 1933. I have taken my starting point from 12th September 1931 when the order relating to the hearing of the preliminary point was made. But the order sheet prior to 12th September 1931, discloses the most extraordinary state of affairs. I take some of the orders at random. On 18th April 1931, both the parties were represented, but nothing

was done because it was said that the Judge was away on leave. On 1st May 1931, there was another of these joint petitions for time which was readily granted. On the 11th May another adjournment was given because there was a suggestion of settlement.

14. On 25th June 1931 the following order is recorded:

I am just now returning from Madras. Put up tomorrow." Next day the learned Judge records this order: "I am not well. Put up on the 29th June." I should have stated that on the 28th the Court was closed on account of Census. On the 29th of June to which date the learned Judge had adjourned the case on the 26th June the order is: "Parties represented. I am busy with other work." On the 3rd July the issues were framed. On 18th July 1931, there comes one of these readily accepted petitions by both parties for time. So the matter goes on as I have said till (on an order of the Court on 12th September 1931) the learned Judge comes to his decision on that matter on 28th February 1933.

15. It would appear that in the Santal Parganas the administration of Civil Justice is a secondary consideration and the order sheet in the case to my mind supports this statement. I have referred to a few only of the orders, but it will be seen from a perusal of them that on a very few days only between 1930 and 1933, was any work done in this case and be it remembered that the Court has so far only tried a preliminary issue.

16. The learned Judge is directed to hear and determine the issue relating to Tauji Nos. 110-3 and 111 together with the other issues in the case according to law and with expedition. The rule is made absolute with costs: hearing fee three gold mohurs.