

(1875) 02 PRI CK 0001

In the Privy Council

Hurronath Roy and Others

APPELLANT

Vs

Gobind Chunder Dutt

RESPONDENT

Date of Decision : 12-02-1875

Acts Referred:

Citation : (1875) 2 IndApp 193

Hon'ble Judges : James W. Colville, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Barnes Peacock, J. 1. This was a suit brought to recover rent at an enhanced rate after notice of enhancement for turuf Oomedpore, a dependent talook comprised within the Plaintiff's 3a. 4g. share of the zemindary pergunnah Mahomedshahee in zillah Jessore. The suit was brought in the Revenue Court under Act X. of 1859. The collector who tried the case thought that the rent ought to be enhanced, and he decreed accordingly. He says : "The case has been pending since 1862, when the issues were first fixed after hearing the pleadings on both sides. I come to the conclusion that the only issue on which there is any dispute between the parties is that first laid down, viz., whether the provisions of sections 15 and 16, Act X. of 1859, do not apply to the talook regarding the rents of which the present suit is brought, and whether the rent under these circumstances can be enhanced. Defendant's mooktear admits the fairness of the pergunnah rates assessed, but bases all his resistance to the paying of the enhanced rent on the principle above mentioned. I do not think there can be any doubt that the rent can be enhanced under the power conveyed in the two decisions above quoted" (referring to two decisions of the Sudder Court of the 30th April, 1821, and of the 11th December, 1860, respectively, which will be considered presently). The collector proceeds,--"It is distinctly laid down there that the rents of talook Oomedpore may be enhanced by the Plaintiff after issuing the notices required by law at the pergunnah rates, and in the face of these decisions of the highest judicial authorities I cannot see that the plea of Defendant can for a moment be entertained, accordingly reject it." 2. The case came on appeal before the High Court, who thought that the main question was

whether, under the circumstances, the rent admittedly never having varied, the talookdar was not now protected by Section 15, Act X. of 1859, and desired that the argument might be confined to this point, and having heard both parties upon it, were of opinion that, under the provisions of the 15th section of Act X. of 1859, the Defendant was protected from enhancement, and they decreed accordingly. 3. The present appeal is against that decision, and the question is whether the Plaintiffs are entitled to enhance the rent in the manner in which they claim to enhance it. The notice of enhancement, is this : "Be it known that in the 3a. 4g. share of pergunnah Mahomedshahee, our zemindary, the 37 mouzahs with hoodahs, julkur, &c, of turuf Oomedpore, on a jumma of Rs. 8346 14a. 4p. without settlement, and liable to increase or decrease, used to be recorded in the name of the late Baboo Nil Comul Pal Chowdhry. On a survey of the lands of the said jumma, the same has been shewn to comprise 26,236 beegahs and 8 cottahs of land, and after deduction of 1041 beegahs and 3 cottahs on account of ghur-lack (unculturable), khal khonduck (ditches, &c), a net area of 25,196 beegahs and 5 cottahs at the prevailing pergunnah rate was assessed at Rs. 36,008 11a. 8p., and a notice having been served accordingly, and a suit No. 63 of 1855 brought for assessment of the said jumma in the Court of the Principal Sudder Ameen of this zillah. On an appeal preferred by us, the fudges of the Sudder Court, on the 11th of December, 1860 (referring to the decree in the former suit), declared that the said mehal was liable to assessment, in accordance with the decision of the zillah Court, after service of notice, therefore, as there is in your possession an excess of land on a deficient jumma, and the productive powers of that land have increased, we consequently serve you with this notice, under the provisions of Section 13 of Act X. of 1859, for the purpose of getting from you from the year 1269 the rents of 25,196 beegahs and 5 cottahs out of 26,237 beegahs and 8 cottahs of land, less 1041 beegahs and 3 cottahs of unculturable ditch, waste land, &c, comprised within the 37 mouzahs and hoodahs, with julkurs, of the aforesaid turuf Oomedpore, by assessment thereof at the prevailing pergunnah rates." Therefore, the ground upon which the Plaintiffs seek to enhance the rent is, that there is in the Defendants' possession an excess of land on a deficient jumma, and that the productive powers of that land have increased. 4. Those are grounds, though not accurately expressed, upon which the rents of ryots having rights of occupancy are liable to enhancement, under Section 17 of Act X. of 1859; but they are not applicable to a dependent talook like the present, which was created before the decennial settlement. Talooks of that description are protected by Section 51 of Regulation VIII. of 1793, from enhancement, except under the circumstances therein mentioned. See also Regulation XL IV. of 1793, Section 7. The decree of the collector, therefore, could, not be supported even if the rent of the talook were liable to enhancement under the provisions of Section 51 of Regulation VIII. of 1793. 5. It may, however, be well to consider whether the High Court was right in holding that the Defendant was by Section 15 of Act X. of 1859, protected from enhancement in any case, and upon any grounds. Section 15 says : "No dependent talookdar, or other person possessing a permanent

transferable interest in land intermediate between the proprietor of an estate and the ryots, who, in the provinces of Bengal, Behar, Orissa, and Benares, holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section 51 of Regulation VIII., 1793, or in any law to the contrary notwithstanding." To bring the case within that section, he must hold his tenure otherwise than under a terminable lease, and he must also hold at a fixed rent, which has not been changed from the time of the permanent settlement. It should be remarked that Section 15 does not render liable to enhancement dependent talookdars, who were exempted by Section 51 of Regulation VIII. of 1793, but exempts from enhancement, amongst others, dependent talookdars who, under the provisions of that section, might otherwise be liable to enhancement. 6. Now, the first question is, did the Defendant in this case hold at a fixed rent? Proceedings which have been taken from time to time between parties who were represented by the parties in the present suit, the zemindar on the one side, and the owner of the talook on the other, have been put in evidence. The first decision to which it is important to refer is that of the 30th of May, 1811. That was a suit brought by Bajender Deb Boy, the then talookdar, against, amongst other Defendants, Kishen Mohun Bannerjee, who derived his title to the zemindary through a purchase at a sale in execution of a decree of the Supreme Court of Calcutta, in the month of Srabun, 1207, and who also claimed turuf Oomedpore under the same purchase. The Plaintiff claimed the talook under a gift from his father, the former zemindar, dated the 27th Bysack, 11.95, before the date of the sale in execution. The zillah Judge, acting upon the bill of sale of the Supreme Court, dismissed the Plaintiffs suit. The Plaintiff thereupon appealed to the Provincial Court of Calcutta, and filed the deed of gift from his father, dated the 27th Bysack, 1195. The case was heard in the first instance by the second Judge, who held that, although Kishen Mohun Bannerjee purchased the zemindary rights of the former zemindar, yet the talookdaree rights of the Appellant could not be destroyed, and under those circumstances it was his opinion that the decision of the zillah Judge was wrong and should be reversed, and that the Appellant should pay to the Respondent the rents of the talook as he did to the former zemindar at the rates of the talook of the decennial settlement. The case afterwards came up in the Court of the first Judge, who agreed with the second Judge, and a decree was accordingly passed as follows : The first and second Judges, having agreed in their judgment that the decision of the zillah Court should be reversed, and that talook turuf Oomedpore be declared as the right of the Appellant in the manner of a Mofussil talook, therefore it was ordered that the decision of Mr. James Devienne Thourne, acting Judge of the Civil Court of the above zillah, dated the 21st of March of the year 1808, be reversed and set aside; and that the Appellant having been put and maintained in possession of the turuf aforesaid, do pay the rents thereof to the Respondent Kishen Mohun Bannerjee in accordance with the amount laid down in the talook of the decennial settlement, which the Appellant used to pay to the former zemindar." Now the rent is there treated as a fixed

rent which the Defendant talookdar used to pay to the zemindar. 7. That decree having been passed in the year 1811, a suit was commenced on the 17th of September 1812, by the then zemindars, Petumber Ghose, and Kishen Mohun Bannerjee, against Mohesh Chunder Deb Roy, minor son of Rajender Deb Roy, and against Ramender Deb Roy, guardian of the above minor, in the Court of Zillah Jessore, for the recovery of Rs. 1443 3a. 12p., alleged to be due for arrears of rent, upon the following allegation, viz., that having purchased the 3a. Ag. share of pergunnah Mahomedshahee, &c, the zemindary of Gobind Deb Roy, they went on paying year by year the sum of Rs. 9268. 8a. 4g. 1c. sicca, the jumma of the above. That on the 30th of May, 1811, A.D.), by a decision of the Judges of the Provincial Court, the talooks aforesaid were decreed as the right of Rajender Deb Roy, as his mofussil talook. After the death of the aforesaid, the Defendants had possession, and when we called for from them the sum aforesaid, being the jumma as per tahoot, which was the proper rental, they, out of the jumma of the decennial settlement, acknowledged only the sum of Rs. 7825. 4a. 8g. 1c. sicca. lint as out of the total of jumma claimed after deduction of the amount of jumma acknowledged by the Defendants, a sum of Rs. 14/13. 3a. 13g. remains due, we therefore institute a miscellaneous suit in the zillah Court, for the recovery of the rent at the rates of the decennial settlement. This appears from the decree of the Sudder Court of the 30th of April, 1821. It also appears from the said decree, that on the 23rd of December, 1813, the acting Judge of the zillah Court, on all the grounds stated in his decision, and in accordance with the decision of the provincial Court, dated the 30th of May, 1811, already referred to,--"Ordered that the said suit be decreed, and that the Defendants were to pay to the Plaintiffs year by year the sum of Rs. 9268. 8a. as the rents of the said talook." The Defendants preferred an appeal to the Provincial Court, and that Court, in accordance with a judgment of an appointed Judge of the Court that the former owner of the zemindary had before the decennial settlement made over the talook at a yearly jumma of Rs. 7825.4a. 8g. 1c. sicca, ordered : "That the decision of the acting Judge of zillah Jessore, dated the 23rd of December, 1813, be reversed and quashed, and that the costs of both Courts be borne by the Respondents." 8. The case came before the Sudder Court on special appeal from the Provincial Court. In their decree, dated the 30th of April, 1821, they state that, amongst other documents, " two papers were put in, viz., on the part of the Plaintiffs, a dhol of the decennial settlement for the year 1197, shewing the jumma of turuf Oomedpore at the sum mentioned in the Plaintiff's plaint; and, on the part of the Defendants, a hustabood paper of the year 1197 B., shewing a decrease of the jumma recorded in the Heba, and fixing it, after deduction of improper abwabs, at the sum of Rs. 761." They then proceed,--"In the opinion of this Court, after examination of these two documents, they are held to be unworthy of credit or reliance, because the document filed by the Plaintiff being alleged to be a document from the collector's office, does not bear the signature or initials of any government officer, and although, on the second document there appears to be the initials of the collector's name, yet his name is not even mentioned in the said hustabood,

and therefore none of those documents appear sufficient to determine the amount of jumma on the talooks of the settlement of that year. In short, the amount of jumma of the disputed talooks, as alleged by both parties, has not been proved by them before this Court; and the decision of the Provincial Court as to the amount it maintains for those talooks by rejecting the claim of the Plaintiffs should be confirmed, as the parties do not agree as to the amount of jumma of those talooks between them; under those circumstances, for the purpose of putting an end to quarrels and disputes between the parties, suits have been instituted for a very long time, that is, from the time of institution of the old suit and of the new one, about the jumma of the disputed talooks in the zillah and in this Court. The order of the Court is that the jumma of talook Oomedpore be fixed according to pergunnah rates, and in accordance with the rules laid down in Section 8, Regulation V. of 1812." Not that the jumma shall be enhanced, but that their being a dispute between the parties as to what was the amount of the jumma, it shall be fixed, according to the pergunnah rates, &c. They thought that it ought to be paid according to pergunnah rates, because they could not ascertain what was the actual amount of the rent; but they did not assess the rent, or fix by their decree the amount to be paid for arrears; nor did they order the rent to be enhanced. The suit was not for the purpose of enhancing the rent, but a miscellaneous suit for recovering arrears. This Committee has already pointed out in a former case of Gopal Lall, which was cited in argument, that there is a great distinction between a suit to enhance and a suit to recover arrears. They there say,--"Their Lordships are of opinion that a suit to enhance is very different from a suit to recover arrears of rent at the rate originally fixed, and that it is founded entirely upon different principles. To a suit for enhancement it will be no bar to plead that all arrears according to the original rate have been paid." 9. The zemindar, acting upon that decision of the Sudder Court, subsequently brought a suit to enhance the rent. We have not the decree of the Court, but we have a reference to it in the 22nd volume of the printed decisions of the Sudder Court, of the 11th of December, 1860. The Court says,--"This suit was brought to enhance the rents of talook Oomedpore, upon a given measurement and pergunnah rates, on the averment that the said talook constituted an under-tenure, comprised in the Plaintiff's 3a. 4g. share of turuff Mahomedshahee, purchased by him at an auction sale, held by order of the Master in Equity of the Supreme Court." It is to be observed that it was purchased, not under a sale for arrears of revenue, but in execution of a decree. Then they proceed to state what the different contentions were, and they finally come to this conclusion : "As then it is evident that Govind Chunder Dutt, who purchased the right of Issarchunder, the mortgagee proprietor, is entitled to be regarded as talookdar of the entire turuff of Oomedpore, and as it is nowhere pleaded that notice of enhancement has been served upon him, the decree in Plaintiff's favour giving him the authority to assess must be subject to Plaintiff's serving the notice required by the law. The present order, therefore, will, under the peculiar circumstances of the case," merely be to the recognition of Plaintiffs right to assess after proper service of notice on the proper parties." Probably

they used the word "assess" instead of "enhance," and intended, to declare that the Plaintiff had a right to enhance upon service of the proper notice. After that decision had been pronounced, an application was made to the Court to review their judgment. The Court say : "Now it is urged through the present petition, and it is objected in Court, that if the decree of the year 1821 confers on the Plaintiff the power to assess, the contention now arises, What rates is the Plaintiff entitled to obtain on such reassessment of the rental? It has been urged that in the case decided in the Sudder Court in the year 1821, the former owner in that case had merely based his right for assessment at an increased rental on the following grounds: That the rents of the lands should be of an amount equal to the amount of sudder jumma of the zemindaries, that is, that it should be Rs. 9400, and the talookdar had pleaded in preference thereto that he could remain in possession on the mokurraree (fixed) rental of Rs. 7400; consequently, in the above suit the only point at issue was whether the owner of the property could enhance the rent to Rs. 9400, or whether the talookdar was entitled to remain in possession on the jumma of Rs. 7400." Then they say : "Mr. Peterson now asks that an enhancement be decreed in our decision, in accordance with the increase granted in the old suit. Our judgment is, that as the Court had merely decided that the Plaintiff could enhance after service of the necessary notices on the tenants, and therefore the present contention as to the amount of enhancement which will have to be fixed in accordance with other rates as above-mentioned, belong to another subject. And after service of the notices above-mentioned upon the tenant, it will then be time to decide that question." Therefore the Court, proceeding on the decree of 1821, declared that the Plaintiff was entitled to enhance, but refused to decide to what extent the enhancement could be made, and left that question, involving the construction of the decree of 1821, open for decision after notice of enhancement should have been served. 10. Now, it does not appear that either after the decree of the 30th of April, 1821, or after that of the 11th of December, 1860, the Defendant, or those under whom he claims, ever paid a higher rent than sicca rupees 7825 odd, or 8346 odd, the corresponding amount in Company's rupees, or that the Plaintiffs or the zemindars under whom they claim ever obtained a decree for arrears assessed at a higher rate; on the contrary, it appears that after the decree of 1821 and before that of December, 1860, viz., on the 22nd of March, 1827, a farmer of the zemindary sued for and obtained a decree against the talookdar for arrears of rent at the rate of sicca rupees 7825 odd, the jumma which he stated was acknowledged by the talookdar. In his plaint in that suit he says the talook was the talook of Rajender Deb Roy; that after his death Mohesh Chunder Boy, having come into possession by right of inheritance without any settlement as to the jumma, used to pay me the sum of Rs. 7825 4a. 8 1/2p. as the yearly rental acknowledged by him. 11. On the 19th of August, 1847, a similar decree for arrears was obtained, the jumma of the talook being stated to be 8346 odd, Company's rupees. 12. On the 31st of March, 1848, there was a similar decree for arrears recovered by the zemindar, who, in his plaint, stated that the talook was recorded in the name of the Defendants, liable to increase or decrease, at

the rent of 8346 odd, Company's rupees. 13. Numerous other decrees were obtained by the zemindars against the talookdars for arrears of rent between 1826 and 1860, either at the rate of 7825 odd, sicca rupees, or at the corresponding rate of 8346 odd, Company's rupees. 14. It appears, therefore, to their Lordships that there was ample evidence, independently of any presumption arising under Act X. of 1859, Section 16, to prove that the talook was held at a fixed rent, and that such rent had not been charged from the time of the permanent settlement. The rent was not changed by the decree of 1821, for, whether right or wrong, it at most amounted to a declaratory decree that the jumma should be fixed at pergunnah rates; or, according to the construction put upon it by the decree of 1860, that the Plaintiff was entitled to enhance. The rent never was assessed at pergunnah rates, and never was enhanced. Besides, there is the statement in the judgment of the High Court that the rent had admittedly never varied. 15. We have been referred to the case of Nuffer Chunder Paul Chowdry and Anr. v. Poulson 12 Beng. L.R. 53 : S.C. 19 Suth. W.R. 175, decided by this Committee on the 24th of January, 1873. It appears to their Lordships that that is quite a different case from the present. That was the case of a mokurruree tenure, and it was proved that it was created as late as 1824. Their Lordships say : "It should be stated that this suit was decided before Act X., to which reference has been made, came into operation. The state of the law then was that he could defend himself by shewing an ancient tenure going back twelve years before the decennial settlement; but he made no case of the kind. He made a case of mokurruree tenure established by pottahs in 1824." The fact that those pottahs were created in 1824, long since the time of the permanent settlement, rebutted the presumption that the tenure had been held from the time of the permanent settlement. 16. Our attention has been called by the learned Counsel for the Appellant to the following paragraph in the judgment in that case : "In their Lordships' opinion the Defendant did establish that the rent at which the talook was held had not been changed for a period of twenty years before the commencement of this suit, and that he thereby cast upon the Plaintiff the burden of shewing "the contrary" (in the words of the Act) or that the rent had been fixed at some later period; and their Lordships are of opinion that the Plaintiff has succeeded in proving that which was cast upon him to prove." But that opinion merely goes to the effect that proof that the pottahs were created subsequently to the permanent settlement rebutted the presumption created by the 16th section of Act X. of 1859, that the tenure had been held at a uniform rent from the time of the permanent settlement. 17. It should be remarked that a rent may be a fixed rent though liable under certain conditions to be enhanced. That position is fully borne out by Section 15, Act X. of 1859. The section does not merely say that the tenures therein described shall not be liable to enhancement "if held at a fixed rent," but "if held at a fixed rent which has not been changed from the time of the permanent settlement." If the mere fact of holding at a fixed rent was a bar to enhancement, the section would have been unnecessary. The term "fixed rent" in that section cannot mean a rent so permanently fixed that it cannot be enhanced under any circumstances. 18.

It is unnecessary to determine what would have been the effect of the decrees of 1821 and 1860, so long as they were unreversed, if Act X. of 1859 had not been passed. Their Lordships concur entirely with the High Court that the effect of those decrees did not put the Plaintiffs in a better position than other landlords who, previously to the passing of Act X., had a good right to enhance, but whose right, if not exercised from the time of the permanent settlement, was taken away by the 15th section of that Act. 19. Upon the whole, their Lordships are of opinion that the High Court came to a correct conclusion in holding that the rent was not liable to enhancement, and they will humbly recommend Her Majesty that the decree of the High Court be affirmed, and the appeal dismissed with costs. 20. There is another appeal which was consolidated with this. The recommendation to Her Majesty will be the same in both cases. 21. The Appellants will pay the costs of both appeals.