

(1910) 02 CAL CK 0060
In the Calcutta High Court

Janaki Nath Chowdhry

APPELLANT

Vs

Kali Narain Roy Chowdhry

RESPONDENT

Date of Decision : 23-02-1910

Acts Referred:

Bengal Estates Partition Act, 1876 — Section 111, 149

Citation : (1910) ILR (Cal) 662

Hon'ble Judges : Teunon, J;Mookerjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mookerjee and Teunon, JJ.—The plaintiff respondent commenced the action out of which this appeal arises for declaration of his title as a mirasdar in respect of five khadas and fifteen pakis of land. The plaintiff and the defendants are co-owners of a taluk within which the disputed land is comprised. The first and the third defendants are proprietors of the superior interest to the extent of four annas the second defendant owns another four annas; the fifth and the sixth defendants claim four annas, and the remaining four annas belong to the plaintiff and the fourth defendant. In the course of proceedings for partition of the estate by the Revenue authorities under Act VIII of 1876, the plaintiff alleged that he was in occupation of the disputed land not as proprietor, but as mirasdar under the entire body of landlords. This allegation was challenged by the co-proprietors of the plaintiff, and the result was a summary investigation by the Collector, who came to the conclusion that the miras set up by the plaintiff was not established. The plaintiff, thereupon, commenced this action for declaration of the alleged miras title, and he has met with varying fortune in the course of the litigation. The Court of first instance made a decree in his favour. Upon appeal, the Subordinate Judge came to the conclusion that the suit was barred by limitation under Article 14 of the second schedule of the Limitation Act. This decision was subsequently set aside by this Court on the ground that the suit was not one to set aside any order of a Revenue Officer within the meaning of that Article. On remand, the Subordinate Judge found on the merits in favour of the plaintiff and

affirmed the decision of the Court of first instance. Three of the defendants have appealed to this Court, and on their behalf the decision of the Subordinate Judge has been assailed on two grounds; namely, first, that the suit is not maintainable by reason of the provisions of Section 149 of the Estates Partition Act (VIII of 1876, B.C.); and, secondly, that the facts found are not sufficient to justify the inference that the tenure alleged by the plaintiff was of a permanent character and extended over the whole of the land in dispute.

2. In support of the first contention, reliance has been placed upon Section 111 of Act VIII of 1876 as the section under which the order of the revenue authorities was made. In our opinion, there is no foundation whatever for this contention; Section 149 provides that no order of a Revenue Officer made under Part IV, V, VI, VII, VIII or IX shall be liable to be contested or set aside by a suit in any Court or in any manner other than that expressly provided in that Act. The learned vakil for the appellant has suggested that the order of the Revenue Officer, holding that the tenure set up by the plaintiff had no existence, was made u/s 111 which is comprised in Part VIII of the Act. Section 111 provides for cases of permanent intermediate tenures, and prescribes the mode in which partition is to take place when the fact of such permanent tenures is established. The section lays down that whenever the Deputy Collector shall find in the parent estate any lands which are held at a fixed rent, or a putni, or other permanent intermediate tenure falling within exception 2 or 3 of Section 7, the Deputy Collector is to take certain action. When we turn to Section 7, it becomes obvious that exception 2 has no possible application. The only provision which can have any application to the present case is the third exception, which provides as follows: "If any land is held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure created by all the proprietors of the estate, subject only to the payment of an amount of rent fixed in perpetuity, and of such a nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietor of the said estate, or any person deriving his title from such proprietors, the rent payable by the holder of such tenure (whether he be known as talukdar, putnidar, mukararidar, or by any other designation) shall be deemed to be the rental of such land." It is obvious, from the phraseology of this exception, that it is applicable only to cases where the existence of the tenure is admitted by all the recorded proprietors of the estate, and it is by common consent allowed to be a permanent tenure subject to payment of rent fixed in perpetuity. In the case before us, it is not admitted at all that there is a permanent tenure, much less is it admitted that the rent of the tenure is fixed in perpetuity. It is clear, therefore, that Section 111 has no application. There is, however, another consideration which proves conclusively that Section 111 cannot possibly apply. The Deputy Collector has authority to take action u/s 111 only when he finds that in the parent estate there are situated lands held at a fixed rent. If the Deputy Collector finds that there is no such tenure as is alleged by one of the parties, he cannot take action u/s 111. The order of the Deputy

Collector, therefore, in the present case cannot be treated as one made u/s 111.

3. It has next been sought to be argued upon general principles that as there has been a decision by the revenue authorities against the plaintiff as to the reality and extent of this tenure, it is not open to the plaintiff to have the matter reagitated in a Civil Court. No authority has been shown in support of this proposition. On the other hand, there are obvious and weighty reasons upon which such a contention ought to be overruled. It is manifest that if, in the course of a partition proceeding under Act VIII of 1876, any question arises as to the extent or otherwise of the tenure, as the tenure-holder is not a party to the proceedings, he is not affected in any manner by the decision which may be arrived at by the revenue authorities for the purposes of partition between the proprietors. It is merely an accident that, in the case before us, the tenure is set up by a person who is also a proprietor and is a party to the proceedings in that character. It would, in our opinion, be unreasonable to hold that a party who has appeared before the revenue authorities in his character as a proprietor, should be finally concluded by a decision upon a question of title, which would not have been binding upon him if he had been a stranger to the proceedings. The learned vakil for the appellant has suggested that Section 149 bars a suit of this description; but this contention is obviously unsound, because, as pointed out by this Court in the case of *Ananda Kishore Chowdhry v. Daije Thakurain* I.L.R. (1909) WB. 726, the object of Section 149 is to exclude the jurisdiction of the Civil Court in cases where the question relates to the decision of the Government revenue or to the details of the partition. We are unable to hold that the policy which underlies Section 149 is to exclude the jurisdiction of the Civil Court in matters which involve a question of title. The result, therefore, is that the first ground upon which the decision of the Subordinate Judge has been assailed must be overruled.

4. In support of the second contention urged on behalf of the appellants, it has been argued that the facts are not sufficient to justify the inference of the Subordinate Judge that the tenure was of a permanent character. Now, the facts found are these: the tenure has been in existence for at least 75 years before the commencement of the suit; its origin is unknown, but it appears to have been created in favour of an Indigo concern, the proprietors of which erected substantial structures on about an one-fifth portion of the land comprised in the tenancy; the Indigo concern was in occupation of the land for about half a century, till the 28th February 1879, when they transferred the tenure to the present plaintiff. Shortly after this transaction, the plaintiff was sued by the proprietors in respect of a raiyati holding purchased by him at the same time from the Indigo concern. That action was commenced on the ground that, as the lands of the holding were not transferable, he had not acquired a valid title by his purchase. On the 7th June 1880, a decree for ejectment was made in favour of the proprietors against the plaintiff in respect of this raiyati holding. The plaintiff, however, has been left in undisturbed possession of the lands of the tenure from the date of his purchase up to the time when, in the partition proceedings, the

existence of the tenure was denied by his co-sharers. We may further state that in the conveyance executed in favour of the plaintiff, his vendors asserted that they had a miras right in respect of the land now in dispute, and the boundaries of the land comprised in the miras, as also of the land included in the raiyati holding, were set out in detail in different schedules. Under these circumstances, the inference is perfectly legitimate that the tenure was of a permanent character. This view is amply supported by the decision of the Judicial Committee in the cases of Nilratan Mandal v. Ismail Khan ILR (1904) WB. 51 and Naba Kumari Debi v. Behari Lal Sen ILR (1907) WB. 902. The learned vakil for the appellant has, however, contended that it would not be proper to hold that the tenure was of a permanent character, inasmuch as there was no recognition of the tenancy by the appellants in the rent receipts produced on behalf of the plaintiff; and, further, that the mere acquiescence of the landlord in the erection of a permanent structure by the tenant does not show that the tenancy was of a permanent character. In our opinion there is no force in either of these contentions. No question of recognition arises in the case before us. The sole point in controversy is whether, from the events which have happened, the inference may legitimately be drawn that the tenancy in its inception must have been of a permanent character. To that question only one answer is possible. No question also of any acquiescence arises in the present case. The learned vakil for the appellant invited our attention to the decision of the Judicial Committee in the case of Abdul Wahid Khan v. Shaluka Bibi ILR (1893) WB. 496, in which a decree for ejectment was made against the tenant, although he had been for several years in possession of his tenancy and had erected substantial structures thereon. That case, however, is obviously distinguishable, because there the terms of the tenancy were known, as the original grant was produced, and what their Lordships held was that if the tenancy was of a temporary character, the mere circumstance that the tenant with full knowledge of his limited rights had erected substantial structures thereon, would not enable him to resist successfully a decree for ejectment in favour of the landlords. Under these circumstances, we must hold that the view taken by the Subordinate Judge as to the nature of the tenancy is correct.

5. A question has been raised as to the precise effect of the decree made in favour of the plaintiff. In the first prayer clause, the plaintiff had asked for a declaration, not only that the tenancy was a permanent one, but also that the rent was fixed in perpetuity. The facts found by the Court below, however, though they justify the inference that the tenancy was of a permanent character, do not support the conclusion that the rent was not liable to enhancement. In reality, this part of the case was not made the subject of discussion in either of the Courts below. We, therefore, declare that the only effect of the decree in favour of the plaintiff is to decide that the tenure is permanent, and the question as to whether the rent is or is not fixed in perpetuity is left open for decision in a suit properly framed for the purpose.

6. The result is that the decree of the Court below is affirmed and this appeal

dismissed with costs.