

(1925) 06 CAL CK 0060
In the Calcutta High Court

Jnan Chandra Dhupi and Others

APPELLANT

Vs

Ray Satish Chandra Chaudhury Bahadur and Others

RESPONDENT

Date of Decision : 16-06-1925

Acts Referred:

Citation : AIR 1926 Cal 645 : 91 Ind. Cas. 451

Hon'ble Judges : Ewart Greaves, J;B.B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—This is an appeal from the judgment and decree of the Subordinate Judge, Fourth Court of Mymensingh, reversing the decision of the Munsif, First Court of Jamalpur.

2. The plaintiff's suit was for possession of 2/3rds share of a certain piece of land and a tank by ejecting the defendant. His case was that the property in dispute was given to one Har Kishore, the father of the defendants as a service-tenure, free of rent, in lieu of service as washerman. The Subordinate Judge finds that owing to no service being rendered the defendants were trespassers and that they had no right to retain possession of the lands as against the plaintiff. It appears, however, that the plaintiff's case was that the tenancy terminated with the death of Har Kishore, the last service-holder and the defendants had no right to be on the land. The Munsif dismissed the suit on the finding that it was the ancestral lakheraj land of the defendants. On appeal, the Subordinate Judge refers to certain documents dating from the year 1858 and comes to the conclusion that the defendant Har Kishore and his father held the tank and the homestead rent free in lieu of service. The Subordinate Judge amongst other documents refers to certain chittas of the plaintiff's sherista, the settlement khatian and the Municipal notice dated 1876, under which the plaintiff's predecessor was required to clean the tank as owner and the Subordinate Judge accepts the evidence that the plaintiff's predecessor had borne all the expenses for cleaning the tank. On all these findings, He has come to the conclusion in favour of the plaintiff. It is contended on behalf of the

defendants, who appealed to this Court that the findings of fact lead to the only inference that the defendants held the lands in dispute as a permanent hereditary rent-free tenure. The argument is that the origin of the tenure is not known. There has been long possession by the defendants from the time of their grandfather. The property was inherited at least in one instance and there is no evidence that it was being held in lieu of service, and from these facts it is contended that it should be inferred that the defendants have a rent-free interest. It was further contended that this right was set up in 1903 when a person named Jamai purporting to have taken a settlement of this property from the landlord brought a suit for ejecting the defendants' father Har Kishore from the land and in that suit Har Kishore filed a written statement claiming absolute niskar right to this property. With regard to the contention that it was absolute niskar we have to say that the circumstances proved are not sufficient to lead to that inference although the origin of the tenancy is not known. It appears from the old documents, which the Subordinate Judge has believed, what the nature of the tenancy was. There has been only one instance of the son succeeding the father and the Subordinate Judge has held that both of them held the land in lieu of service. On the other hand there is the evidence of the settlement record which according to the contention of the appellants means that the property, was a grant with the burden of service, but that seems to be not conclusive. Because in one column it is stated that it is lakheraj of Har Kishore and in the remarks column it is stated that it is held as chakran as washerman. That may mean that the property is not liable for any rent but it was held in lieu of service to be rendered. It is, therefore, difficult for us to say that the finding of the Subordinate Judge is erroneous. The allegation on the part of Har Kishore as to his absolute title to the property after disputes had commenced between him and the plaintiff is of very little avail to the defendants. The land lord had gone against Bar Kishore for some reason or other and at that time Har Kishore was asserting a title of his own. The fact that the landlord did not proceed to eject him within 12 years of, such as section of his right does not confer upon Har Kishore any higher right than what he had when he entered into possession of the property as a service-tenure-holder under the plaintiff.

3. In this view it cannot be said that the Subordinate Judge is wrong in his conclusion and the appeal must be dismissed with costs.

Greaves, J.

4. I agree.