

(1915) 12 CAL CK 0004
In the Calcutta High Court

Kartick Chandra Das

APPELLANT

Vs

Satya Sree Ghosal and Others

RESPONDENT

Date of Decision : 16-12-1915

Acts Referred:

Citation : 32 Ind. Cas. 240

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

Bench : Division Bench

Judgement

1. This is an appeal after remand from the judgment and decree of the learned Subordinate Judge of the 24-Pergannahs, who agreeing with the Court of first instance has decreed the plaintiffs' suit for ejectment of the defendants. The defendants claimed a permanent right in the land which is situated in Kidderpore, a suburb of Calcutta. They alleged that they had acquired such a right By long possession beyond the memory of man at a fixed rent and that their predecessors had erected permanent structures on the land. In the first appeal from the Munsif's judgment which was heard by another Subordinate Judge, it was held that the kabuliati set up by the plaintiffs of the year 1301 was a forgery and that the defendants were entitled to the presumption from long possession and from the existence of permanent structures and he accordingly dismissed the plaintiffs' suit. The plaintiffs appealed to this Court and the appeal was heard by Jenkins, C.J., and Nalini Ranjan Chatterjea, J., who remanded the case reversing the decree of the lower Appellate Court and sending back the appeal for re-hearing in the light of the remarks they had made. Those remarks were chiefly two in number, firstly, that the presumption which was made by the Subordinate Judge in the first Court offended a legal principle, inasmuch as if the original lessor was a shebait of debutter he would not have acted in discharge of his duty as shebait by fixing a rent for all time which would in future be wholly inadequate, and it was, therefore, necessary to make a further inquiry into the origin of the tenancy, whether at the origin of the tenancy the property had acquired a debutter character, as upon this would depend the applicability of the presumption. There was a further suggestion that the weight to be attached to

the word *bharatia* should also be considered by the learned Subordinate Judge.

2. In strict law a remand made by an Appellate Court without retaining the appeal in its own file necessarily re-opens the whole case, and the Court of Appeal to which the case was remanded is bound to hear the appeal upon the judgment of the Court of first instance and on nothing else. It is true that this Court in the exercise of its powers of supervision under the Charter has assumed, and we think rightly assumed, in certain cases authority to limit the scope of certain appeals remanded to the lower Courts without keeping them in its own file. But whenever this is done, it is in our opinion absolutely essential that this Court should lay down clearly without any possibility of mistake that it did intend to limit the scope of the appeal to certain specified questions. We are, therefore, of opinion that the learned Subordinate Judge who has now re-heard the case was right in holding that the whole appeal was open to him for decision. The importance of this lies in the fact that the first Appellate Court found that the *kabuliat* which is now found to be the real origin of the present tenancy was a forgery. The Subordinate Judge on remand has found and has given very good reasons for finding that this *kabuliat* must have been a genuine document. He, therefore holds that there is no question that at the inception of this tenancy in 1301 the lessor was the *shebait* of *debutter* property. But he has gone further and has found that eliminating this *kabuliat* as the origin of the tenancy there can be no presumption of a grant of a permanent tenancy, the earliest *dakhila* which is the first evidence of the existence of this tenancy being of the year 1246 and in this also the landlord signed as *shebait*. If the appellants say that the tenancy originated before 1246 and that at that time the land was not *debutter*, the learned Subordinate Judge says that that fact must, he thinks, be proved by evidence, but they have not been able to produce any evidence on the point.

3. We come, therefore, to the fact that at the point where the origin of the tenancy is lost in obscurity and where the presumption would arise if it ever arose, the tenancy was held under *shebait*s whose origin must also be considered to be lost in obscurity, and not only was it held under *shebait*s but it was expressly stated that the tenants were *bharatia* tenants. This was the second point which the learned Subordinate Judge was specially directed to devote his attention to in deciding the appeal, and his finding on this point is that the word *bharatia* which has been used from the earliest times to describe these tenants cannot be said to mean permanent tenants. The learned Judge, who is an officer of very great experience and very sound judgment and must be intimately acquainted with the use of such terms as *bharatia*, says: "I have never seen the word *bharatia* used with reference to annual tenants with permanent rights, the word as ordinarily used signifies monthly tenants of houses or lands without any permanent right." Now this is not a question for the Judge as to the legal effect of the word. It is a question essentially for the Jury of the ordinary meaning of word in common use, and the decision of the learned Subordinate Judge on the point is, therefore, final and not open to us to discuss in second appeal.

4. We think, therefore, that on all the points the appeal of the defendant fails and must be dismissed with costs.