
(1936) 08 CAL CK 0008

In the Calcutta High Court

Case No : Letters Patent Appeals Nos. 40 and 41 of 1935

Kumar Sarat Kumar Roy

APPELLANT

Vs

The Faridpur Loan Office Ltd. and Others

RESPONDENT

Date of Decision : 03-08-1936

Acts Referred:

Citation : (1936) 08 CAL CK 0008

Final Decision : Allowed

Judgement

1. These two appeals have arisen out of a judgment of our learned brother Mr. Justice M.C. Ghose. The suit in which these appeals have arisen was instituted by the Plaintiff, Faridpur Loan Office, Ltd., for recovery of the amount claimed by way of contribution and compensation, and the case of the contesting parties has been clearly stated in a summary of the pleadings given in the trial Court's judgment which is reproduced below:

The Plaintiff company and Defendants Nos. 2 to 38 are co-sharers in respect of a zemindary under which the principal Defendant holds patni in respect of several mouzas. According to the pattas granted in favour of the predecessor-in-interest of the principal Defendant the patnidar was liable to pay the entire revenue of the zemindary to the Government together with all other cess and dues that might be assessed by the Government upon the said zemindary in future. The Defendant No. 1 failed to perform the contract embodied in the patta and neglected to pay the cess of the zemindary due for the June kist of 1926 and March kist of 1927. The Collector consequently realised the cess from the Plaintiff company by issuing certificates for realisation of the same. The Plaintiff company claims interest at the rate of Re 1/- on the amount so paid and alternatively prays that in case the Defendant No. 1 be not liable for the amount, decree might be passed against the co-sharers Defendants to the extent mentioned against the name of each in the schedule of the plaint. The Defendants do not appear, though duly summoned. The principal Defendant No. 1 files a written statement contending that there was no contract between him and the maliks to

pay the cess in respect of which the suit has been instituted. He says that at the time of the patna being granted in respect of the patni no cess laws were in force, that when the cess was assessed it was orally agreed between him and the maliks that he would pay to the Government the cess of the zemindary in addition to the revenue and deduct the same out of the rent payable by him to the Zemindars and would pay to the latter Only the balance, that after the re-valuation of the cess, the dues on this account from the zemindary became such high that it was not covered by all the rent and cess payable by patnidars to the Zemindars and that in the circumstances the Defendant No. 1 is not liable for the dues claimed by the Plaintiff in this suit. He further says that he has sent to the Plaintiff company by rent money order its dues after deduction of the share of revenue and cess payable by it to the Government and that it has been accepted.

2. On the materials placed before the trial Court, it came to the decision that the Defendant No. 1 was not liable for the payment of cess as claimed in the suit, either by virtue of any contract contained in the patta creating the putni, or on the basis of any subsequent contract. The suit was dismissed so far as the Defendant No. 1 was concerned; there was however an ex parte decree passed against the Defendants Nos. 2 to 34 in proportion of their respective shares. The Plaintiff appealed from the decision of the trial Court, and the appeal was dismissed by the Court of Appeal below. It would appear that the learned Subordinate Judge proceeded mainly, if not solely, on the construction of the stipulations contained in the putni patta of the 22nd April, 1851, one of the six leases on exactly similar terms, in respect of different villages Comprised in estate No. 5,578 of the Jessore Collectorate, granted by the predecessors of the present proprietors, the Plaintiff and the Defendants Nos. 2 to 38. Against the decision of the lower Appellate Court there was a second appeal to this Court, which was decided by our learned brother Mr. Justice M.C. Ghose and by his decision dated the 11th July, 1935, the learned Judge allowed the appeal and remanded the case to the trial Court. The Plaintiff, as also the Defendant No. 1, appealed from the decision of our learned brother; and on behalf of the Appellants, the questions submitted for our consideration relate to the interpretation and construction of the putni patta of the year 1851, with reference to which the rights and liabilities of the parties in respect of rent and cesses must be determined.

3. The material portion of the putni patta, so far as it is relevant for the purpose of the case before us, was the following:

If any figure comes to be levied upon our zemindary by Government or if it increases on any account, you shall pay the same proportionately in addition to the rent.

4. The interpretation that the Plaintiff wanted to place on this clause was that it meant not proportionately to the part that was settled in putni; but proportionately to the revenue payable by the grantor for his share of the whole estate. As indicated already, the entire body of the proprietors settled a part of

the estate, twelve villages, at certain rent fixed in perpetuity and provided that out of these would be paid by the lessee, the whole Government revenue.

5. In our judgment, the correct interpretation of the stipulation was the one given by the Subordinate Judge, and the Judge was right in holding that the meaning of the clause that you will pay proportionately any new figure that might come to be levied in respect of the estate was plain; that it provided for the lessee paying any additional figure that might be imposed by Government in respect of the estate proportionately. As the Subordinate Judge held, the six leases, containing similar stipulations taken together, could only mean that the lessee should pay the new imposition proportionately to the area demised. In the above view of the case before us, we are unable to give effect to the interpretation placed by our learned brother Mr. Justice M. C. Ghose that the word " proportionately " dearly meant proportionately to the share of the fractional zamindar.

6. It remains now to state that on our interpretation of the document in question, the decision of the Subordinate Judge in the Court of Appeal below has to be affirmed in its entirety, and there is no scope for any remand, as directed by our learned brother Mr. Justice Ghose in his judgment, seeing that in view of the scope of the suit in which these appeals have arisen, no liability as claimed in the suit could be fastened, so far as the Defendant No. 1 was concerned. As pointed out by the Subordinate Judge in his judgment, there is no evidence in the case showing what proportion of the cesses payable in respect of the entire estate falls upon the twelve villages, so that it is not possible to decree the claim in suit to any extent against the Defendant No. 1. In the result, the appeal by the Plaintiff (Letters Patent Appeal No. 40 of 1935) is dismissed with costs. The other appeal (Letters Patent Appeal No. 41 of 1935) is allowed; the decision of Mr. Justice M. C. Ghose is set aside, and the decision and decree passed by the trial Court, which was affirmed by the Subordinate Judge in the Court of Appeal below is restored, with costs throughout, including the costs in this Court.