

(1890) 04 CAL CK 0010

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 943 of 1888

Madhub Nath Surma

APPELLANT

Vs

Myarani Medhi

RESPONDENT

Date of Decision : 29-04-1890

Acts Referred:

Citation : (1890) 04 CAL CK 0010

Judgement

O'kinealy and Ghose, JJ.—The facts of this case, as we gather from the two judgments of the lower Appellate Court, dated the 1st February 1888 and 23rd July 1889, are shortly these. A certain estate, known as "nisf-kheraj," was settled very many years ago by the then Rajah of Assam with the predecessors of the Plaintiff. This grant was subsequently confirmed by the British Government. In the year 1879, when the said nisf-kheraj estate was surveyed, it was found that the Plaintiff held certain lands in excess of the grant: and these lands, including the land in suit, were excluded from the nisf-kheraj estate and settled in 1881 with the Plaintiff for a year. This settlement was in conformity with an order of the Government of India that when lands were thus excluded from a nisf-kheraj estate settlement was first to be offered at full rates to the nisf-kherajdar. Subsequently, however, a pottah was given to the Plaintiff for a portion of the lands held by him, and the other portion was settled under a kobala pottah with the Defendant. The Plaintiff afterwards brought the present suit to recover possession of two bighas of land, being a part of the lands excluded from the nisf-kheraj estate and settled with him in 1881.

2. The suit of the Plaintiff is upon the ground of unlawful dispossession; and the question which we have to consider upon the facts found by the lower Appellate Court is whether he is entitled to any relief in this action. The learned Deputy Commissioner is of opinion that inasmuch as a settlement has been made with the Defendant by the Revenue authorities, a decree if given to the Plaintiff would affect such settlement; and that this suit cannot, by reason of the provisions of Section 154, Clause (a), of the Assam Land and Revenue Regulation, 1886, lie in the Civil Court.

3. It has been further contended before as by the learned vakeel for the Respondent, referring to Sections 2, 6, and 11 of the Assam Regulation, that all previous Regulations and Rules (if any) in regard to any of the matters dealt with by the said Regulation have been rescinded, and could not therefore now be relied upon; that the Regulation recognises only certain rights which are specifically mentioned in Section 6; and that the right claimed by the Plaintiff does not fall within that section.

4. Section 2 no doubt says that "all Regulations and Rules (if any) in force there relating to any of the matters provided for by this regulation shall be repealed:" but the proviso (6) to this section lays down that " all rules prescribed, appointments and settlements made, powers conferred and notifications published under any enactment hereby repealed, and all other rules (if any) in force on the date on which this Regulation comes into force relating to any of the matters hereinafter dealt with, shall (so far as they are consistent with this Regulation, and could be prescribed, made, conferred, or published thereunder) be deemed to have been respectively prescribed, made, conferred, and published thereunder."

5. With reference to this proviso; we have to consider whether the orders of, and the rule laid down by, the Government of India, and referred to in the judgment of the Deputy Commissioner "are consistent with this Regulation, and could be prescribed, made, conferred or published thereunder."

6. Section 6 provides as follows: "No right of any description shall be deemed to have been, or shall be, acquired by any person over any land to which this chapter applies, except the following:

(a) rights of proprietors, landholders, and settlement-holders other than landholders, as defined in this Regulation, and other rights acquired in manner provided by this Regulation;

(b) rights legally derived from any right mentioned in Clause (a);

(c) rights acquired under Sections 26 and 27 of the Indian Limitation Act, 1877;

(d) rights acquired by any person as tenant under the rent law for the time being in force:

Provided that nothing in this section shall be held to derogate from the terms of any lease granted by or on behalf of the British Government.

7. Sections 7, 8, 9, and 10 declare the rights of proprietors and landholders.

8. Section 11 refers to settlement-holders, and it is as follows: "A settlement-holder, who is not a landholder, shall have no rights in the land held by him beyond such as are expressed in his settlement lease."

9. The Regulation then proceeds in Section 12 to give to the Chief Commissioner certain powers, and it runs as follows: "The Chief Commissioner may make rules

for the disposal, by way of grant, lease, or otherwise, of any land, over which no person has the rights of a proprietor, landholder, or settlement-holder under this Regulation." So that the Chief Commissioner is empowered to make rules for the disposal of any land in respect of which no person may have a right under the Regulation.

10. We then find that in giving to the Settlement Officer a discretion in respect of the settlement of lands in which no person has a permanent and heritable interest, the Regulation lays down in Section 32(2) that this discretion must be "subject to such rules as the Chief Commissioner may make u/s 12." And Section 35 lays down "If the person to whom a settlement is offered refuses to accept it, it shall be in the discretion of the Settlement Officer, subject to such rules as the Chief Commissioner may make u/s 12, to exclude him for the term of the settlement from possession of the estate, and to offer the settlement thereof to any other person he thinks fit."

11. Now, referring back to the proviso (b) of Section 2, it would appear that, assuming that the Plaintiff has no right to this land as a settlement-holder (as in fact he has none), the rule, prescribed by the Government of India before the promulgation of the Regulation, that when lands were found by survey to be in excess of a nisf-kheraj estate, a settlement thereof should be, in the first instance, offered to the nisf-kherajdar, was a rule which is fully "consistent with this Regulation, and could be prescribed, made, conferred, or published thereunder" by the Chief Commissioner u/s 12; and as such, it must be taken to have been prescribed under this Regulation.

12. In this view of the matter, it seems to us that the Plaintiff has a right to hold the land and obtain settlement thereof, and that this right can only be forfeited if he refuses to take settlement at full rates. And it does not appear that a settlement was offered to the Plaintiff, and that he refused to accept it. That being so, the Settlement Officer was not justified in excluding the Plaintiff from settlement.

13. It would appear, however, from the judgment of the Deputy Commissioner that a kobala pottah for the land in question had been granted by the Settlement Officer to the Defendant when this suit was brought. We do not know what are the terms of this settlement.

14. Section 39 of the Regulation provides that, "subject to the provisions of Section 151 of this Regulation, the order of a Settlement Officer as to the person to whom a settlement should be offered, the amount of revenue to be assessed, and the nature and term of the settlement to be offered, shall be final, and a settlement concluded with that person shall be binding on all persons from time to time interested in the estate; but, except as provided by Sections 35 and 36, no person shall, merely on the ground that a settlement has been made with him or with some person through whom he claims, be deemed to have acquired any right to or over any estate, as against any other person claiming rights to or over

that estate."

15. And Section 151 lays down: "The Chief Commissioner, a Commissioner, a Deputy Commissioner, a Settlement Officer, and a Survey Officer, may call for the proceedings held by any officer subordinate to him, and pass such orders thereon as he thinks fit."

16. Sections 39 and 151 read together amount to this--that a settlement made by a Settlement Officer, unless interfered with by the Chief Commissioner, is final; but the settlement-holder does not thereby acquire any right to the property as against any other person claiming rights to it. So that the settlement already made with the Defendant cannot now be interfered with; but he has not thereby acquired any right to the land as against the Plaintiff.

17. And Section 154, which has been relied upon by the Deputy Commissioner as debarring the Plaintiff from obtaining relief in the Civil Court, has merely the settlement actually made by a Settlement Officer in view. The first portion of the section runs as follows: "(1) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following matters:

(a) Question as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force ;

(b) Question as to the amount of revenue, tax, cess, or rate to be assessed, and the mode or principle of assessment.

It is not necessary to notice the remaining portion of the section except (m) "Any matter respecting which an order expressly declared by this Regulation to be final, subject to the provisions of Section 151, has been passed." And then Clause 2 says: "In all the above cases jurisdiction shall rest with the Revenue authorities only."

18. If the Plaintiff had sought in this case to set aside the settlement made with the Defendant, we apprehend we could not give him that relief. But he does not ask for that: what he asks for is the declaration of his right, and recovery of possession of the land from which he has been dispossessed. We think that, having the right to hold the land and to obtain a settlement thereof, his dispossession under the circumstances already mentioned was improper. But the property having already been settled with the Defendant by the Revenue authorities on the date when the suit was brought, and the Defendant having entered into possession under that settlement, we are unable to interfere with it, and give a decree to the Plaintiff for possession. He is, however, in a position in this case to obtain a declaration that he is entitled to a settlement of the lands in question.

19. We, therefore, direct that the Plaintiff be declared entitled to a settlement of the lands in suit, and that the decrees of both the lower Courts be set aside, but, in the circumstances, without costs.