
(1946) 01 CAL CK 0005
In the Calcutta High Court
Case No : Appeal No. 12 of 1943

Maharaja Bahadur Singh

APPELLANT

Vs

Barkatulla Gachua and others

RESPONDENT

Date of Decision : 30-01-1946

Acts Referred:

Citation : (1946) 01 CAL CK 0005

Judgement

Sharpe, J.—This appeal arises out of a suit by the plaintiffs for a declaration of their title to and for confirmation of their possession of the suit land, which is C. S. plot 4450 and which, according to the plaintiffs has been wrongly recorded in the khas khatian of their landlord, defendant 1, and in the plaintiff's forceful possession. According to them, it should have been recorded in their possession in Khatian No. 76 pertaining to their jama of Rs. 7-9-0 and they prayed therefore for correction of the settlement records. The suit was contested by defendant 1 who claimed that the land was his khas land and appertained to a jama of Rs. 18-14-0 which had been held by the plaintiffs, but which had been sold in execution of a rent decree, and thereafter settled by him with defendant 2, who was in possession. Plaintiffs based their title on a kabala Ex. 2 by which the suit land and other plots were purchased by their father and uncle from one Fazarulla, who had purchased from Kasimulla in whose name the jama stood originally. Defendant 1 on the other hand produced a certificate of sale Ex. A, and claimed that plot No. 12 of that certificate was the plot in dispute. The learned Munsif who tried the suit held that plaintiffs' document clearly covered the suit land, that the defendant's document did not, and that the plaintiffs had proved their title. He found also that the suit land had all along been in possession of the plaintiffs and that the C. S. khatian was therefore liable to be corrected. He decreed the plaintiffs' suit accordingly, declaring their tide, confirming their possession and directing correction of the khatians.

2. An appeal against this decision was dismissed. The learned Additional District Judge who heard the appeal held on a careful and detailed discussion of the documents of title that the plot in dispute appertained to the jama of Rs. 7-9-0

and that the plaintiffs had title to the same. He held further on consideration of the evidence that the plaintiffs had been all along in possession of the disputed plot and that defendant 1 had never been in khas possession of it, and consequently that the entries in the record of rights were incorrect. Two points have been urged on behalf of the appellant. The first is that the decision of the Courts below is bad because they did not take into consideration the presumption of correctness of the record of rights; the second is that the entries in the plaintiffs' kabala on which their title was based were neither admissible against nor binding on, the landlord and should not have been relied on for establishing their title.

3. In support of the first contention, reliance has been placed on 31 C. W. N. 448 Bepin Behari v. Trailakya Nath ("27) 14 A. I. R. 1927 Cal. 933 :102 I. C. 398: 31 C. W. N. 448 and 45 C. W. N. 57 Shankarrao Dagadujirao v. Sambhu Nathu Patil ("40) 27 A. I. R. 1940 P. C. 192: I. L. R. (1940) Kar. P. C. 380: 190 I. C. 342: 45 C. W. N. 57 (P. C.). It seems to me, however, that the facts of the present case are very different from the facts then under consideration. In the earlier case, the plaintiffs sued for declaration of their title and confirmation of possession of land of which they had been in possession continuously since their purchase in 1294 B. S., first through tenants and thereafter in khas from 1910 and obtained a decree. In the record of rights prepared in 1916, the suit land was recorded in the possession of the defendants, and since it did not appear that the District Judge, who affirmed the decision of the trial Court decreeing the plaintiffs' suit, had allowed the defendant the benefit of the presumption arising from the entry in the record of rights and since there was no documentary evidence subsequent to 1897 showing the plaintiffs' possession, and the record of rights was clearly an important piece of evidence of possession, the appeal was remanded for rehearing. In the later decision, their Lordships of the Privy Council emphasised the necessity for giving effect to the statutory presumption contained in S. 135J, Bombay Land Revenue Code of 1879 (corresponding to the presumption under S. 103B, Bengal Tenancy Act) and observed that where the appellate Court had given no effect to that presumption, his finding was not binding upon the High Court, in second appeal.

4. In the present case, however, the matter is quite different. The whole dispute between the parties was whether the entry in the settlement record showing plot 4450 in the landlord's khatian and in forceful possession of the plaintiff was correct and the suit was brought for correction of the records after declaring plaintiff's title and confirming his possession. A specific issue was framed in the trial Court: "Is the C. S. Khatian in question liable to be corrected?" and in the appellate Court one of the questions noted for decision was: "Is the record of rights correct?" The entries in the settlement record formed the cause of action for the suit and there is, it seems to me, ample indication in the judgments of both Courts that those entries were adequately considered. Both parties entered into evidence in support of their contentions, the plaintiffs to show that the entries so far as they related to title and possession were wrong, the defendant

to show that they were correct. It is true that neither Court noted specifically that the presumption of correctness of the record of rights had been rebutted but where there was a specific issue on the question of the correctness and it was definitely found on examination of the evidence of both parties that the entries were not correct, this necessarily implies in my opinion a finding that the presumption of correctness was rebutted. After all, the value of the record of rights is mainly with regard to the question of possession, and on that question it was already in favour of the plaintiffs so far as regards actual possession, only the entry that their possession was forceful was found to be incorrect; and when on the question of title both parties produce the evidence on which presumably the entry, so far as it relates to title, must have been based, the finding that plaintiffs' title had been established was really equivalent to a finding that the presumption had been rebutted. I find no reason, therefore, to suppose that the decision of the lower Courts was bad on this account.

5. The learned advocate for the appellant has not cited any ruling relating directly to the second contention. Certain decisions were referred to which have been noted in Meunnier's Evidence Act with regard to the recitals in documents between strangers and relating to land other than the land in suit. In the present case, however, the plaintiffs' kabala is their document of title and has been found to cover the land in suit and it was executed by their predecessor-in-interest in their favour. It was in my opinion clearly admissible under S. 13, Evidence Act. As the learned Additional District Judge has pointed out, it has not been sought to be used against the defendant landlord in respect of any matter of which admissibility is barred by the provisions of S. 18A, Bengal Tenancy Act. It is true that the recitals in the kabala will not be binding on the landlord, but there is nothing to indicate that its evidentiary value has been misappreciated by the lower Courts. I see no reason for interference on this ground either. The result is therefore that this appeal is dismissed with costs for the contesting respondents. Leave to appeal under S. 15, Letters Patent is refused.