

(1914) 07 CAL CK 0018
In the Calcutta High Court

Maharaja Birendra Kisore Manikya Bahadur

APPELLANT

Vs

Kailas Chandra Sarkar and Another

RESPONDENT

Date of Decision : 03-07-1914

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103B

Citation : 30 Ind. Cas. 937

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for assessment of rent. His allegations are that the defendants are tenants of some land within his estate, that they have unlawfully taken possession of the. disputed land which is not comprised within their tenancy, that in 1894 in the course of Settlement proceedings they were found in occupation of this land, and that although they were then entered in the Record of Rights as settled raiyats, they have not attorned to him and have not taken settlement at a fair and reasonable rent. The defendants urged that they are rent-free holders and that the claim is in any view barred by limitation. The Court of first instance dismissed the suit as barred by limitation, but gave the plaintiff a declaration that he had zemindari right in the disputed land. The defendants were satisfied with this decree as it did not hurt them in any way, but the plaintiff preferred an appeal. The Subordinate Judge has confirmed the decree of the primary Court on the ground that the claim for assessment of rent was barred by limitation. In the present appeal it has been argued for the plaintiff that as the decree of the Court of first instance was not challenged on behalf of the defendants, it must be taken that they were tenants under the plaintiff and consequently no question of limitation could arise. In our opinion, there is no foundation for this contention.

2. The Court of first instance, when it declared that the plaintiff had zemindari right in the disputed land, merely intended to hold, as is clear from an examination of the judgment, that the land was situated within the ambit of his

estate. The Court found that as the land was surrounded by trial lands of the zemindari it might be deemed to be mal land; but the Court did not find that the defendants or their predecessors held, at any time, as tenants under the plaintiff. The defendants are consequently not embarrassed by the declaration in favour of the plaintiff, which they never questioned by way of an appeal : *Maharaja Birendra Kisore Manikya Bahadur v. Nazir Mahommad* 30 Ind. Cas. 917 : 22 C.L.J. 122.

3. We have next to determine, whether the claim for assessment of rent is or is not barred by limitation. The plaintiff contends that the claim is not barred in view of the entry in the Record of Rights, published on the 17th December 1898, to the effect that the defendants were settled raiyats. u/s 103 B of the Bengal Tenancy Act this entry must be presumed to be correct until it is proved by evidence to be incorrect. We may here observe parenthetically that there is a slight difference in language between Sub-section (3) of Section 103B as it stands under Act 1 of 1907 and Section 103B as it stood under Act 111 of 1898. Under the latter Act, every entry in a Record of Rights finally published was to be presumed to be correct until the contrary was proved. under Sub-section 3 of Section 103B as it stands under Act 1 of 1907, every entry in a Record of Rights shall be presumed to be correct until it is proved by evidence to be incorrect. It is not necessary for our present purpose to determine whether the introduction of the words by evidence effects an alternation in the law. But it is plain that the evidence by which the entry may be proved to be incorrect, may be evidence of facts of a date prior to that of the publication of the Record of Rights: *Sheonandan Persad v. Bacha Raut* 4 Ind. Cas. 54 : 9 C.L.J. 284. In fact, as the question primarily is whether the entry in the Record of Rights was correct at the time when it was made, that is, correctly stated the facts as they stood at that time, evidence of facts of a date prior to the publication of the record must be admissible, although evidence of facts subsequent to the publication may also throw an important light upon the solution of the problem. In the case before us, there was a dispute between the plaintiff and the defendants in the course of Settlement proceedings. The plaintiff contended that the defendants were not in occupation of the disputed land, while the defendants asserted that they were in occupation as rent-free holders. Evidence was taken and, on the 6th May 1894 it was decided that the possession of the defendants was proved. We start then with the position that in 1894 the plaintiff repudiated the defendants and declined to recognise them as tenants; his case at the time was that they were trespassers. On the other hand, the defendants asserted that they held as rent-free holders; they did not claim to hold as tenants under the plaintiff. To this must be added the statement made by the plaintiff in his plaint in this suit that although since 1898, when the Record of Rights was finally published, the defendants have been repeatedly asked to take settlement at fair and equitable rates, they have not attorned to him and have fraudulently omitted to do so. We have thus the facts that the defendants were treated by the plaintiff as trespassers in 1894 and that notwithstanding the entry in the Record of Rights in

1898, the defendants have since that date repudiated the theory of a possible tenancy. We are of opinion, in these circumstances, that the entry in the Record of Rights has been amply rebutted, in the absence of any suggestion and any evidence in support of a possible allegation that between 1894 and 1898 a tenancy was created by the plaintiff in favour of the defendants. The position then is that while, according to the defendants, they and their ancestors have been in occupation of the disputed land from generation to generation without payment of rents, the plaintiff has failed to prove that he or his predecessor has ever been in possession of the land by actual occupation or receipt of rent. We are of opinion that, in these circumstances, the claim for assessment of rent, which is really a claim for possession of the land, is barred by limitation and the suit has been rightly dismissed: Chundrabullee v. Luckhea 10 M.I.A. 214 : 1 Suth. P.C.J. 902 : 2 Sar. P.C.J. 119 : 19 E.R. 952 Abhoy Churn Pal v. Kally Pershad Chatterjee 5 C. 949 : 6 C.L.R. 260 Dharani Kanta Lahiri v. Gabar Ali Khan 18 Ind. Cas. 17 : 17 C.L.J. 277 (P.C.) : 13 M.L.T. 185 : (1913) M.W.N. 157 : 17 C.W.N. 389 : 15 Bom. L.R. 445 : 25 M.L.J. 95 Gagan Chandra Chuckerbutty v. Maharaja Birendra Kisore Manikya Bahadur 30 Ind. Cas. 931 : 22 C.L.J. 134.

4. The result is that the decree of the Subordinate Judge is affirmed and this appeal dismissed.