

(1928) 02 CAL CK 0046
In the Calcutta High Court

Mahommad Hossein Choudhury

APPELLANT

Vs

Khana Kazi and Others

RESPONDENT

Date of Decision : 10-02-1928

Acts Referred:

Bengal Tenancy Act, 1885 — Section 29

Citation : AIR 1928 Cal 606

Hon'ble Judges : Mitter, J; Mallik, J

Bench : Full Bench

Judgement

Mitter, J.—This is a plaintiff landlord's appeal against the decision of the Subordinate Judge of Dacca dated 9th April 1925 affirming the decision of the Munsif of Manikgunj dated 2nd October 1923. The plaintiff commenced the suit in which this appeal arises for rent and claimed arrears of rent at the rate of Bs. 17-1-31 gandas. Defendant 2, now respondent, who alone contested the suit pleaded that the rental was Rs. 10-0-15 gds. and that the rent was liable to be suspended on the ground of partial dispossession. So far as the defence of suspension of rent is concerned, both the lower Courts overruled the objection taken by the defendant, but gave effect to the plea that the plaintiff was not entitled to more than Rs. 10-0-15 gds. The ground on which the defendant rested his defence which had prevailed in both the Courts below that the plaintiff is not entitled to a higher rent than Rs. 10-0-15 gds. is that the previous compromise decree between the plaintiff and the defendant was in contravention of the provisions of Section 29, Ben. Ten. Act, and could not be given effect to. The facts which have led to this litigation may be shortly stated thus : The lands in respect of which this rent suit has been instituted along with other lands form certain chur fands and they were recorded in the finally published Record-of-Rights as khas lands in possession of the landlord. But the defendants went on possessing the lands after they had re-formed in situ and claimed them as appertaining to their original holding. In 1919 a suit was instituted by the present plaintiff for declaration of title to and recovery of possession in respect of certain chur lands including the disputed lands. The suit was compromised

between the plaintiff and the defendants. By the compromise the plaintiff admitted that the disputed lands were the defendant's raiyati jote lands with occupancy right and the defendants admitted that the disputed plots and the yearly rent payable for the said plots were correctly specified against the names of the respective tenants-defendants in the schedule to the solenama and with regard to the disputed lands the quantity of which is stated to be 29 bighas odd, the yearly rent was shown to be Rs. 17-1-3 gds. 1 kara. Both the Courts held that this compromise which was made under Order 23, Rule 3, Civil P.C., and which was embodied in a decree could not be given effect to as the rental mentioned in the compromise exceeded more than two annas in the rupee, the rental which had previously been paid in respect of these lands, and consequently contravened the provisions of Section 29, Ben. Ten. Act, as admittedly the disputed lands were raiyati holdings. The Mupsif, accordingly, gave a decree to the plaintiff at the rate of Rs. 10 odd. On appeal to the Subordinate Judge, he affirmed the decision of the Munsif. A second appeal has been taken to this Court by the plaintiff and two points have been urged before us by the learned vakil for the appellant.

2. It is argued in the first place that the compromise should be given effect to, even if it contravened the provisions of Section 29, Ben. Ten. Act, for the compromise decree was binding unless the same was set aside and it was admitted in this case that the compromise decree stands.

3. It is argued in the second place that Section 29, Ben. Ten. Act has no application, because there was a bona fide dispute prior to the institution of the previous title suit which was settled by the compromise arrived at therein.

4. In support of the first ground, reliance has been placed on the case of *Ishan Chandra Banikya Vs. Moomraj Khan*, , where the learned Judges held that a decree passed in contravention of the provisions of Section 147-A, Ben. Ten. Act, as applicable to Eastern Bengal and Assam, cannot be treated in a subsequent suit between the parties as without jurisdiction and a nullity but is operative and binding until vacated by appropriate proceedings. This decision, it was pointed out in that case, received support from two Full Bench decisions of this Court in the cases of *Hriday Nath Roy v. Ram Chandra Barna* AIR 1921 Cal. 34, and *Gora Chand Haldar and Another Vs. Prafulla Kumar Roy and Others*, . There can be no doubt that the decision in *Ishan Chandra Banikya Vs. Moomraj Khan*, cited above, supports the first ground on which the learned vakil for the appellant rests his appeal. But it has been argued by the learned vakil for the respondent that the view taken in the case in *Romesh Chandra v. Moomraj Khan* AIR 1926 Cal. 1101, is contrary to the view taken by Coxe and N.E. Chatteriea, JJ., in the case of *Sharjug Sharam Lal v. Rukhit Mahto* 17 C.W.N. 496. There the learned Judge held that a decree for rent passed in accordance with a compromise in contravention, of the provisions of Section 147-A, Ben. Ten. Act, i.e., without recording evidence to show what the amount of rent was before the dispute arose, is made without jurisdiction, and the tenant is not bound to have it set

aside, for, according to the learned Judges, the decree was a nullity. No doubt this case supports the contention of the respondent But it seems to me extremely doubtful whether the view taken in this case can be regarded as sound, having regard to the decisions in the Full Bench cases to which I have just referred. As was pointed out in the Full Bench case in *Hriday Nath Roy v. Ram Chandra Barna* AIR 1921 Cal. 34 it is the authority to decide a case at all and not the decision given therein which constitutes jurisdiction. Jurisdiction is the power to hear and determine and it does not depend either, upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. In this connexion, reference may be made to the observations of Lord Hobhouse in the case of *Malkarjan v. Narhari* [1901] 25 Bom. 337, where it is pointed out that a Court has jurisdiction to decide wrongly as well as rightly and that the irregular exercise of jurisdiction does not render the order made in the case without jurisdiction and that such orders regularly made must be set aside and cannot be challenged in a collateral proceeding. Chatterjea, J., who was a party to the decision in the case in *Sharjug Sharan v. Rukhit Mahto* 17 C.W.N. 496 had to consider in a later case the soundness of his own decision. In the case of *Hem Ch. Choudhury v. Chandra Mohan Namadas* 24 C.W.N. 1070 Chatterjea J. observed with reference to the the case in 17 C.W. Notes as follows:

The question whether a non-compliance with, a particular prevision of the law constitutes an irregularity or renders an order a nullity, has been considered in the recent Full Bench decision in the case of *Hriday Nath v. Ram Chandra* AIR 1921 Cal. 34. It is unnecessary, however, to discuss how far (if any) the principle laid down by the Full Bench affects the decision in the case of *Sharjug Sharan Lal v. Rukhit Mahato* 17 C.W.N. 496, because we think that the present case is distinguishable from that case.

5. We think that in view of the Full Bench decisions to which we have referred and to the observations of the Judicial Committee in *Malkarjan's* case, it cannot be said that the compromise-decree in this case was passed without jurisdiction. The result is that the first ground prevails.

6. We also think that the second ground taken is a good ground. It seems to us that there was bona fide dispute with regard to the title to the lands in respect of which the present rent suit was instituted. In the Record-of-Rights these lands were shown to be in the khas possession of the plaintiff. The entry in the finally published Record-of-Rights must be presumed to be correct until the contrary was shown and that gave the landlord a just reason to institute the suit for recovery of possession of these lands which were recored in his khas possession as the tenant-defendants had not abandoned the possession of those lands. The lands had recently come out of water and, as naturally happens in these cases, there is a sort of dispute between persons to whose holdings the lands were annexed and the proprietor of the land. There was such a dispute and a bona

fide dispute by reason of the entry in the Record-of Rights in favour of the plaintiff landlord and it was in settlement of that dispute that this compromise was arrived at. Both the parties realized, as the compromise petition shows, that if the said title suit continued, they would both be ruined on account of useless expenditure, and neither party would gain much. Therefore, both the plaintiff and the defendant in that suit without any reference to the plaint and the written statement compromised the suit in the manner namely, that for 29½ bighas of land the defendant was to pay an yearly rent of Rs. 17 odd. The second ground is a substantial ground and must also prevail.

7. The result, accordingly, is that the decrees of the Courts below are set aside and in lieu thereof, we direct that the plaintiff do get rent from the defendant at the rate of Rs. 17-1-3½ gandas for the period in suit. The plaintiff-appellant is entitled to his costs both here and in the Courts below.

Mallik, J.

18. I agree.