

(1950) 09 CAL CK 0017
In the Calcutta High Court
Case No : A.F.A.D. No's. 868 to 870 of 1946

Monmotha Nath Mukherjee	Vs	APPELLANT
Shebaita of Sree Sree Sreedhar Jew and Another		RESPONDENT

Date of Decision : 06-09-1950

Acts Referred:

Bengal Tenancy Act, 1885 — Section 102, 103B(5)
Limitation Act, 1908 — Article 131

Citation : AIR 1951 Cal 330 : 54 CWN 973

Hon'ble Judges : Lahiri, J; Das Gupta, J

Bench : Division Bench

Advocate : Apurba Charan Mukherjee and Narendra Nath Mukherjee, for the Appellant; Dwijendra Nath Mukherjee, for the Respondent

Judgement

Lahiri, J.—These three appeals are by the plaintiff and arise out of as many suits for the assessment of fair and equitable rent in respect of lands recorded in Khatians 89, 40 and 38 of Mouza Saharaberia. The plaintiff's case is that he is the Patnidar of the aforesaid Mouza under the Maharaja of Burdwan and that the disputed land is part of his Mal assets. The defendants have been recorded in the C. S. record as raiyats under the plaintiff but in the column of rent there is an entry of Niskar and in the remarks column there is an entry ^chl cRljsj m/os fc:) n[ky izek.k lw=* *-The plaintiff prays for a declaration that the entry about Niskar is wrong and for assessment of fair and equitable rent.

2. The defendants contest the suit on the ground that the disputed land was never part of the Hal assets of the Mahal and that the defendants and their predecessors have been holding the lands without payment of rent for more than 12 years and as such the prayer for assessment of rent is not maintainable.

3. In S. A. Nos. 869 and 870 the defendants further pleaded that the disputed lands were covered by two Taidads which were produced at the trial.

4. The trial Court dismissed the suits upon the finding that the entry in the

record-of-rights had not been rebutted and in S. A. Nos. 869 and 870 upon the finding that the lands are covered by the Taidads produced by the defendants which were mentioned in the numerous documents executed by the predecessors of the defendants. The Court of appeal below has affirmed that decision but upon a different ground. It has held that the plaintiff has failed to discharge the initial burden that lay upon him to prove that the lands in suit were assessed to revenue and the suits must fail on that ground. With regard to the Taidads produced by the defendants in S. A. Nos. 869 and 870 the appellate Court has found that the identity of the disputed land with the lands of the Taidads has not been established.

5. Mr. Apurba Charan Mukherjee appearing in support of the appeal has not contested the proposition of law which is now well established upon the authority of *Jagdeo v. Baldeo* 49 I. A. 399 : (A. I. R. 1922 P. C. 272) and other cases that the initial burden is upon the plaintiff to prove that the land was assessed to revenue at the time of permanent settlement. But he has argued that the onus has been discharged by the entries in the record-of-rights in which the disputed land has been recorded as appertaining to revenue-paying Touzi No. 12 of the Burdwan Collectorate and the defendants have been recorded as raiyats under the plaintiff. The entry in the remarks column to the effect " ^chl cRljsj m/os fc:) n[ky izek.k lw=* **"-connotes that the plaintiff had title to the land which title has been extinguished by the adverse possession of the defendants. In the present appeals it is admitted that the land is within the geographical ambit of the plaintiff's Mahal but upon the authorities that is not enough. It must further be proved that the lands were assessed to revenue. The entry in the C. S. record to the effect that the land appertains to the revenue paying estate No. 12 in our judgment raises a presumption that the land was assessed to revenue.

6. Mr. Dwijendra Nath Mukherjee for the respondents relied upon the decision in *Kamala Ranjan Roy Vs. Ifran Sheikh and Others*, in support of the proposition that the entry in the C. S. khatian raises no such presumption. In this case the entry was Niskar ^^Hkksx n[ky lw=* ** which does not involve any admission about the title of the plaintiff and it was pointed out by a Division Bench of this Court that in, the case of small plots of land entered as Niskar the word "Niskar" is employed by the Settlement Authorities not in the technical sense of rent-free land but in the larger sense of revenue-free land. Where, as in the present appeals, the entry is Niskar by adverse possession, it involves an admission of the plaintiff's title and the theory of revenue-free title is ruled out. We, therefore, hold that the effect of the entries in the record-of-rights is that the plaintiff has succeeded in proving that the disputed land was assessed to revenue. This conclusion also follows from the fact that the defendants have been recorded as raiyats under the plaintiff who is admittedly the Patnidar under the Maharaja of Burdwan.

7. The plaintiff has accordingly discharged the initial burden that lay upon him of proving that the land was assessed with revenue. It is, therefore, for the

defendants to prove how they have acquired the rent-free title. On this point the entry in the record-of-rights is that they have acquired the rent free title by adverse possession for more than 20 years. The effect of this entry is that the plaintiff's right to have the rent assessed is barred by limitation. The question is whether this entry carries with it the presumption of correctness u/s 103B (5). Mr. A. C. Mukherjee has argued that it does not because this entry is not authorised by any of the different clauses of Section 102, Bengal Tenancy Act. The opening paragraph of Section 102, however, indicates that the different clauses mentioned in that section are not exhaustive because that paragraph authorises the inclusion of other particulars besides those mentioned in Clauses (a) to (j).

8. We, therefore, hold that the settlement authorities had jurisdiction to record the manner in which the rent-free title was acquired by the defendants. Mr. Mukherjee relies upon Rule 37 of the Technical Rules and Instructions of the Settlement Department but we find nothing in that rule which takes away the jurisdiction of the C. S. Authorities to make an entry like this. u/s 103B (5), Bengal Tenancy Act, every entry in a finally published record-of-rights should be presumed to be correct. The entry, therefore, that the defendants have acquired a rent-free title by adverse possession should accordingly be presumed to be correct. In our judgment it means that the plaintiff's right to have the rent assessed has become barred. Mr. Mukherjee relied upon the cases of Jagdeo v. Baldeo 49 I. A. 899 : (A.I.R. 1922 P. C. 272), Akbar Sarkar v. Ramesh Chandra 38 C. L. J. 207: (A. I. R. 1923 Cal. 392) and Sheonandan Singh and Others Vs. Kesho Prasad Singh, for the proposition that mere non-payment of rent for any length of time does not bar the landlord's right to have the rent assessed. But these decisions do not lay down that the landlord's right cannot be barred under any circumstances. The landlord's right will be barred if there was a demand and refusal more than 12 years before the institution of the suit under Article 131, Limitation Act. In our judgment the entry to the effect that the defendants acquired a rent free title by proof of adverse possession for more than 20 years means that there was a demand and refusal more than 20 years before the final publication of the record-of-rights.

9. For these reasons these appeals must fail and should be dismissed with costs.

Das Gupta, J.

10. I agree.