

(1901) 07 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2105 of 1899

Nawab Singh

APPELLANT

Vs

Charan Rana and Others

RESPONDENT

Date of Decision : 30-07-1901

Acts Referred:

Citation : (1901) 07 CAL CK 0006

Judgement

1. This is an appeal from an order of the Officiating Deputy Commissioner of the Santhal Pergunnahs affirming a decision of the Subordinate Judge of Deoghur, by which he rejected the plaint of the Appellant before us under sec. 54, cl. (e) of the Civil Procedure Code. The clause in question provides that a plaint shall be rejected if the suit appears from the statements in the plaint to be barred by any positive rule of law. We have therefore to see whether upon the statements in the plaint, the Plaintiff's action is so barred. The Plaintiff begins by stating that his father was in possession of Mouzah Ratna as a tenant with all the rights and privileges of a mul-raiyat paying rent to the ghatwal for the time being, and that he, his father and his uncle, and after his uncle's death his son Goman Singh were all interested in the mouzah in question. In paragraph 3 he asserts that the existing rights and privileges of his father as a mul-raiyat were recognised by the settlement authorities. In paragraph 4 he states that his father possessed besides the above mouzah 3 bighas of paddy land and 8 bighas 15 cottas of bari land ; and that the other lands under cultivation were in the occupation of tenants, and the rest Were jungle. In paragraph 5 he further asserts that his father held and possessed the mouzah for many years both before and after the settlement made with him under Regulation III of 1872; that on the death of his father he succeeded to his rights and entered into possession of the aforesaid properties; that when subsequently he applied for the registration of his name before the Sub-Divisional Officer on expunction of the name of his father, opposition was raised by certain other persons who alleged that he should not be recognised as a mul-raiyat ; that he was a mere prodhan and should be dismissed, and that Gobinda Rana, one of the objectors, should be appointed

prodhan. Then he goes on to say that the Sub-Divisional Officer recommended his dismissal, and he was accordingly dismissed by the Deputy Commissioner on the 4th of April 1896 ; and he alleges that such dismissal was ultra vires and in excess of the authority vested in that officer. He alleges further that he questioned the propriety of the order before the Commissioner of the Santhal Pergunnahs, and he sets out the order which was made on his appeal. He was told to wait for the result of the inquiry now in progress or to sue. In paragraph 11 he alleges that the rights which his father possessed, and which he, after his father, became possessed of were and are permanent and transferable rights recognised by custom and law, and for that reason his dismissal and eviction from the village was unjustifiable. It will be seen from the statements contained in paragraph 11 of the plaint that the Plaintiff distinctly averred that he had permanent transferable rights recognised by custom and law in the village in question, and he questioned the propriety of his dismissal. In paragraph 13 he refers to some report made by the Assistant Settlement Officer in which he expressed himself to the effect, that the Plaintiff's father did not seem to live to be a mul-raiyat ; and he (the Plaintiff) prayed that his rights and privileges as mul-raiyat may be declared to the property in question ; that the order of the executive authorities may be declared ultra vires, invalid and inoperative, and that possession may be given to him of the said property of which he had been dispossessed, and so forth. Under sec. 11 of the CPC there can be no question that this was a suit of a civil nature within the cognizance of the Court in which it was instituted; and that the Plaintiff was entitled to have an adjudication of it unless it appeared to the Court upon the statements contained in the plaint itself that it was barred by any positive rule of law. The judgments of the Courts below refer to no positive rule of law by which it can be said that the suit is barred; and we were therefore compelled to ask the pleader for the Respondent to show us any positive rule of law within the meaning of sec. 54 which would deprive the Plaintiff of his right to obtain relief from the Court. He has referred to secs. 11 and 25 of Regulation III of 1872, which in our opinion do not touch the present matter. What the result of the case may be when it is tried according to law it is unnecessary for us to discuss. But so far as the provisions of the sections on which reliance has been placed by the learned pleader for the Respondent are concerned, it is enough to say that they are inapplicable to the present question.

2. The Courts below have held that inasmuch as the Plaintiff is suing to establish a mul-raiyati right which by a Government order of the 6th October 1897 was not granted, and inasmuch as he seeks for the position of a mustagir and to set aside the executive orders of the Commissioner and Deputy Commissioner, those orders being final, and the appointment resting with the Commissioner and Deputy Commissioner, the right to set them aside cannot be contested in a civil suit. But the judgment proceeds on the assumption that those orders are valid in law. The Plaintiff on the other hand questions their validity. He contends that they are ultra vires. He asserts that his rights in the village are permanent, and he cannot be divested of them by any order made by any executive authority.

3. It appears that the Courts below have wrongly applied the provisions of cl. (c), sec. 54 of the CPC to such a suit as this. The order rejecting the plaint under sec. 54 is therefore set aside and the case remanded to the first Court for the purpose of enabling the Defendant to file his written statement, and in order that the trial may be proceeded with in accordance with law.

4. The costs will abide the result. Under sec. 13 of the Court-fees Act, we direct that the court-fee on the memorandum of appeal be refunded to the Appellant.