

(1885) 07 CAL CK 0028
In the Calcutta High Court

Peari Mohun Mukherji

APPELLANT

Vs

Banshi Majhi

RESPONDENT

Date of Decision : 01-07-1885

Acts Referred:

Citation : (1885) ILR (Cal) 757

Hon'ble Judges : O'Kinealy, J;Field, J

Bench : Division Bench

Judgement

Field, J.—Two points have been taken in this appeal. The suit was brought to enhance the rent of a certain holding." The Judge in the Court below held that the enhancement notices and the proceedings taken thereupon were bad because a number of holdings were treated as separate, and separate notices were issued in respect thereof, while the evidence showed that these holding"s were consolidated. The Judge relies upon the accounts filed by the plaintiff. He also relies upon certain pottahs. These pottahs in a subsequent part of his judgment lie holds not binding upon the parties, but although they were not binding upon the parties, inasmuch as they were granted by a Hindu widow, it might be contended that they are evidence on the particular point. Whether they are or are not evidence, the Judge is clearly wrong in finding that the annual accounts kept by the plaintiff showed that he treated the holdings as consolidated. This being* so, we think that the findings of the Judge below on the point of consolidation should be set aside; and it would have been necessary for us to remand the case in order that the Judge below, after excluding from his consideration the annual accounts which were not evidence, might, upon the rest of the evidence, come to a finding whether the holdings had been consolidated or not. It is, however, agreed by the counsel for the parties that this question shall remain open. We, therefore, set aside the findings of the Court below upon the question of consolidation, and this question will remain an open one between the parties.

2. The second point argued is concerned with twenty years" presumption. It is

found as a fact that the payment of rent for twenty years at the same rate has been proved, and this being so there arises a presumption according to Section 4, Beng. Act VIII of 1869, that the land has been held at this rate from the time of the permanent settlement. It is then sought to rebut this presumption by showing that this tenure or holding has come into existence since the time of the permanent settlement. If this could be shown, no doubt the presumption would be rebutted. The facts are these: In the year 1197 (1790) a taluk containing three mouzahs--Srikissenpur, Lakhinarainpur and Ramlochanpur, together with other villages,--was settled for ten years from 1197 to 1206 (1790 to 1799), and was number 73 in the Collector's towji. On the expiry of that decennial settlement, a second settlement was made with a person who had purchased at a revenue. sale the rights of Komalprosad, with whom the first settlement was made. In 1818 a measurement was made, and as the result of this measurement there was in 1823 a settlement made for a large portion of excess land (Towfeer). This Towfeer or excess land was found to be no less than 10,492 bighas. This excess land was separately settled in 1823 under a separate number 796; and it therefore became a separate revenue-paying estate. It is admitted by both parties that the lands which form the subject of this and other cognate suits are included within the Towfeer Estate No. 1076. The plaintiff's contention is that it must be assumed that the land settled as Towfeer in the year 1823 was not under cultivation in 1793, that is, the time of the permanent settlement. It is contended that if it were cultivated land, it must have been included in the settlement of 1197, or in that of 1206. If that is a proper contention, it is then further contended that the defendants' holding must have come into existence not earlier than 1823.

3. Now, in the first place, we may observe that, in order to maintain the presumption of section 4 of the Act, cultivation is not essential. What the law says is, that it must be presumed that the land was held from the permanent settlement, and land may be held without being cultivated. It is impossible for us to assume that if the tenures which form the subject of dispute in these suits were cultivated lands in 1793, they must have been included in one of the two settlements of 1197 or 1206. There is admittedly no evidence to show the condition of the land at that early period. Both settlements were made as well for waste as for cultivated lands, and we cannot hold that the land omitted from the earlier settlement and afterwards settled must have been uncultivated in 1197 and 1206, and therefore during the intervening years, and therefore at the time of the permanent settlement.

4. We think, therefore, it is impossible to say that it has been proved that these holdings came into existence not earlier than in 1823; and therefore the twenty years' presumption has been rebutted and does not apply.

5. Under the circumstances the appeal must be dismissed with costs.