
(1946) 01 CAL CK 0018

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1451 of 1942

Phani Bhusan Dutta and Others

APPELLANT

Vs

Banamali Majhi Santal and Others

RESPONDENT

Date of Decision : 25-01-1946

Acts Referred:

Citation : (1946) 01 CAL CK 0018

Final Decision : Allowed

Judgement

Sharpe, J.—The Plaintiffs are the Appellants and the appeal arises out of a suit brought by them for declaration that an order made by the Collector u/s 49H of the Bengal Tenancy Act ejecting them as transferees from C. S. plot 18 of Mauza Madhnpur is without jurisdiction and therefore null and void, and also for a declaration of their title to that plot and recovery of khas possession thereof. Plaintiffs alleged that their predecessor took settlement of the land now covered by C. S. plots 17 and 18 of Mauza Madhnpur from Tanay Majhi, the predecessor-in-interest of the Defendants, by a registered patta in 1904, at an annual rental of Rs. 1-4 per annum. At the time of the Settlement Operations, a record-of-rights was prepared in which C. S. Plot 17 was correctly recorded as appertaining to their tenancy, but C. S. Plot 18 was wrongly recorded in the khas khatian of the heirs of Tanay Majhi. With a view to remedying this error, it is claimed that the Majhis (Defendants) brought a rent suit in 1932 in the plaint of which it was admitted that the record-of-rights was wrong and that both plots 17 and 18 were included in the jama of Rs. 1-4. An ex parte decree was obtained and subsequently the Majhis realised rent for some years and granted dakhilas confirming that both lots 17 and 18 were included in the jama of Rs. 1-4. In 1940, however the Majhis (Defendants) made an application to the Special Officer for the Aborigines, who is empowered with powers of a Collector under Chapter VIIA of the B. T. Act alleging that they had been dispossessed from plot 18 by the Plaintiffs, and the Special Officer made an order for their ejection u/s 49H of that Act. Plaintiffs contend that this plot was included in their patta of 1904 and that the Collector had therefore no jurisdiction to make the order.

Hence the suit.

2. The Defendants contested that suit and maintained that the Civil Courts had no jurisdiction to interfere with the order of the Collector, that C. S. plot 18 was never included in the Plaintiffs' patta, that the Settlement Record is correct, that the Plaintiffs brought a collusive rent suit in 1932 without the knowledge of the Defendants and dispossessed them thereafter and consequently the Plaintiffs are entitled to no relief.

3. The learned Trial Court held on a consideration of the boundaries of Plaintiffs' patta that C. S. plot 18 included therein, that the Plaintiffs had been all along in possession of this land, that the story of Defendants' dispossession in the year 1341 and also the story that the rent suit of 1932 had been brought and the Dakhilas for the subsequent years granted by the Defendants without their knowledge were untrue. In these circumstances, he held that the order of the Collector was without jurisdiction since the transfer of C. S. plot 18 was prior to 1st November, 1910, and therefore not affected by the provisions of Chapter VIIA of the Bengal Tenancy Act. He held further that the Plaintiffs had established their title to C. S. plot 18 excluding that portion which fell to the south of a rasta of the Patta depicted in the Commissioner's Map, and decreed the suit accordingly, setting aside the order of the Collector and directing that the Plaintiffs should get possession of the land of which their title was declared.

4. On appeal the learned District judge held that it had not been established that the Plaintiff's patta covered C. S. Plot 18 but that it covered C. S. Plot 17 only. In his opinion, cultivation of the land began after the publication of the record-of-rights in the year 1920, and the admission by the Defendants in their rent suit of 1932 did not prove that the land in dispute had been transferred in 1904 by the patta or before 1920. In his opinion, too, the transfer, if any, took place in 1932 or thereabouts, so that the Collector had jurisdiction u/s 49H of the Bengal Tenancy Act to eject the Plaintiffs from C. S. Plot 18 of which they had not been in continuous possession for 12 years. Consequently he allowed the appeal and set aside the decree of the Trial Court.

5. Mr. Das, for the Appellants, has urged mainly that the order made by the Collector should be held to be without jurisdiction because the Defendants did not allege that C. S. Plot 18 had been transferred to the Plaintiffs but claimed that they had been forcibly dispossessed by them. He contends that jurisdiction is conferred by section 49H of the Bengal Tenancy Act only in cases in which there has been a transfer in contravention of the provisions of section 49B of that Act, i.e. where there has been a transfer by "private sale, gift, will, mortgage, lease or any contract or agreement" in contravention of some provision of Chapter VIIA, and as, in this case there is no allegation of any transfer by the Defendants in 1932 but the case for the Defendants is that they were dispossessed by the Plaintiffs forcibly, the order of the Collector purporting to be made u/s 49H must be held to be without jurisdiction and consequently the Civil Courts have authority to set aside that order under the provisions of section 49N of the Act.

6. The other ground urged by Mr. Das, in case his first ground fails, is that in coming to his finding that C. S. Plot 18 was not covered by the Plaintiffs' patta of 1904, the learned District Judge did not take into consideration the Commissioner's Report, or the findings of the Trial Court, especially the finding that the acceptance of the Defendants' arguments with regard to the boundaries of the Patta of 1904 will exclude also C. S. Plot 17 which is admitted to be covered by those boundaries or the dakhilas granted by the Defendants for the years subsequent to the rent suit which support the Plaintiffs' title to C. S. Plot 18 and also that he did not sufficiently consider the effect of the rent decree of 1932, which can now be set aside only by a suit on the ground of fraud, for which the period of limitation has already expired. He has therefore prayed that if the first ground is not accepted as sufficient the appeal should be remanded to the Lower Appellate Court for rehearing and for coming to a decision with regard to Plaintiffs' title to C. S. Plot 18 after considering all the materials thereafter for decision that whether the Collector's order can be sustained by reason of provisions of sec. 490 of the Bengal Tenancy Act.

7. On behalf of the Respondents, Mr. Mukherji has contended that in view of the finding of the learned District Judge that C. S. Plot 18 is not covered by the Plaintiff's patta the Plaintiffs are out of court, and that there can be no question that the Collector has jurisdiction to make the order under sec. 49H ejecting the Plaintiffs. He has contended further that the findings of the Collector with regard to the application to him were ample to give him jurisdiction to make the order for ejection and since the Plaintiffs did not utilise the provisions contained in sec. 49M of the Act for appeal against that order, the Plaintiffs cannot now contend that it was made without jurisdiction, and that it is not open to them to come to the Civil Courts to revise the findings of the Collector. He maintains that the findings of the Collector confirmed by the learned District Judge that a lease was created by the rent suit was sufficient to give him jurisdiction, and since the Collector could take action under sec. 49H on his own initiative, he was not bound by the statement of the Defendants that they had been forcibly dispossessed but had ample jurisdiction to determine the real state of things and to take action accordingly. He has also urged that the Lower Appellate Court has not failed to consider all the material evidence, and that the dakhilas which are subsequent to the rent suit are of no value. He contends that the view taken about the rent suit was correct since all the proceedings with regard to that suit point clearly to the collusive methods adopted and that the appeal was rightly decided.

8. The provisions of sec. 49N of the Bengal Tenancy Act make it clear that the bar to suits in the Civil Court to vary or set aside any order of the Collector passed under Chapter VII A of that Act will not be applicable where the order is attacked on the ground, and it can be established, that it was made without jurisdiction. The jurisdiction for making an order under sec. 49H of the Act is provided by the section itself, and in cases like the present simply that the transfer on account of which the order for ejectment of the transferee is made is

in contravention of the provisions of sec. 49B of the Act. The exercise of the jurisdiction is subject also to the further conditions of the proviso (a) and (b) of sub-sec. (1). This is one of the classes of cases referred to in Reg. v. Commissioners of Taxes L. R. 21 Q. B. D. 313 at 319 (1888) where it is stated by Lord Esher, Master of the Rolls:--

When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it, proceeds to do certain things, it shall have jurisdiction to do such thing but not otherwise. Then it is not for them conclusively to decide whether that state of facts exists and if they exercise the jurisdiction without its existence what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of fact exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from the exercise of their jurisdiction.

9. Now in the present case, it seems clear that the exercise of the jurisdiction by the Collector to make orders under sec. 49H of the Bengal Tenancy Act comes within the first class of cases mentioned, since that section makes no provision for action by the Collector on his finding that certain preliminary facts exist, but merely provides that if they exist, he may make an order for ejectment. It is true that sec. 49M provides for an appeal to the Collector of the District or to the Commissioner of the Division, where the original order is made by the Collector, against any order made under sec. 49H. But sec. 49M does not confer any further powers on the Collector or the Commissioner to determine whether the conditions precedent to the exercise of the jurisdiction exist, and I cannot agree with the contentions advanced on behalf of the Respondents that the jurisdiction of the Civil Courts is ousted because the Plaintiffs in this case did not avail themselves of their right of appeal. Their failure to do so may of course give rise to suspicion as to their bona fides and justify doubt as to the truth of their claims, but it cannot, in my opinion, operate to oust the jurisdiction of the Civil Courts in a proper case to set aside the order of the Collector under sec. 49N of the Bengal Tenancy Act if satisfied that such order was made without jurisdiction.

10. Turning now to the first point urged by Mr. Das, there is the finding of fact by the learned District Judge that the Plaintiffs' patta of 1904 did not include C.S. Plot 18, and that it forms no part of the jama of Rs. 1-4. It cannot therefore be held that it was transferred by that patta, and the settlement record of 1920 affords a presumption that it had not been transferred at least up to that year. The view of the Collector who passed the order under sec. 49H was that it was the intention "to derive the effect of a lease in respect of Plot 18 from the rent suit of 1932, . . . I hold therefore that the extension of the lease to plot 18 was illegal and there is a clear case for restoration under sec. 49H B.T. Act." This appears similar to the view taken by the learned District Judge, but his finding in that connection is not definite. He says: "If it (Plot 18) was transferred at all the transfer took place in 1932 or thereabouts." It is unfortunate that this finding is not precise; because I must agree with Mr. Das's contention that sec. 491 of the Bengal Tenancy Act applies in a case of the present nature only where there has been a transfer of some kind referred to in that section, and unless there was such a transfer, the order of the Collector under sec. 49H would be without jurisdiction. There is no provision in that section conferring jurisdiction merely because the aboriginal tenure-holder or raiyat as the case may be, has been dispossessed of his property, and there does not appear to be any provision in Chapter VIIA for the making of an order for ejectment of a trespasser or of the person who may have forcibly dispossessed the aboriginal tenant. Unless, therefore, there is a clear finding that the aboriginal tenant has transferred the property in some manner set forth in sec. 49B, it must be held in my opinion, that the order for ejectment is without jurisdiction.

11. In view of the conclusion which I have reached with regard to the question of jurisdiction and since it will be necessary in my opinion to remand this case to the Lower Appellate Court for deciding whether there was in fact a transfer by the Defendants of C. S. Plot 18 within the meaning of sec. 49B of the Bengal Tenancy I do not think it would be proper for me to express any definite opinion in regard to Mr. Das's further argument that in view of the Defendants' own claim of dispossession, a finding that C. S. Plot 18 was in fact transferred cannot be sustained or Mr. Mukherji's answer to that argument.

12. Since the appeal is being allowed on the ground already, stated, and the appeal will in any case have to be reheard in part by the learned District Judge so that all points should be finally decided. I think it will be desirable to deal also with Mr. Das's second ground. There seems to be some force in Mr. Das's contention that the materials which have been mentioned above when indicating the second branch of his argument, were not considered or at least not considered sufficiently in coming to the finding that C. S. Plot 18 was not covered by the Plaintiffs' patta of 1904, and I do not think that Mr. Mukherji's general answer to these contentions to be sufficient. In my opinion, therefore, the appeal should be reheard generally, including the question whether C. S. Plot 18 is covered by the Plaintiffs' patta of 1904, and if the decision of that question should be in the affirmative whether the order of the Collector under sec. 49H

was without jurisdiction. If however, the decision of that question (i.e. if C. S. Plot 18 is covered by the patta of 1904) should be in the negative, then, as already indicated, it will have to be decided definitely whether a transfer was made by the Defendants of C. S. Plot 18 independently of the patta of 1904 and whether for that reason there was jurisdiction for the making of the order by the Collector under sec. 49H of the Bengal Tenancy Act. The result is that the appeal is allowed and the decree of the Lower Appellate Court is set aside. The appeal out of which the appeal has arisen is remanded to the Lower Appellate Court for re-hearing. There will be no order as to the costs of this court and future costs will abide the result of the appeal after hearing.