

(1898) 08 CAL CK 0011
In the Calcutta High Court

Pran Nath Nandi and Others	Vs	APPELLANT
Sariatullah Sarkar and Others		RESPONDENT

Date of Decision : 26-08-1898

Acts Referred:

Bengal Tenancy Act, 1885 — Section 178, 183
Evidence Act, 1872 — Section 48

Citation : (1899) ILR (Cal) 184

Hon'ble Judges : Pratt, J;Ameer Ali, J

Bench : Division Bench

Judgement

Ameer Ali and Pratt, JJ.—This appeal arises out of a suit brought by the plaintiffs under the following circumstances. The plaintiffs own a twelve-anna share of Mouzah Mobouli by virtue of putni settlements, some acquired in 1297 (1890) and some in the year 1300 (1893), and they seek in this action to obtain khas possession of certain jote lands, on the ground that the defendants Nos. 8 and 9, who were the holders of the jotes in question had conveyed, or rather purported to convey the same to the defendants 1 to 7, although there was no custom or usage in the village recognising the transferability of occupancy rights, and that consequently the plaintiffs were entitled to obtain khas possession of the said lands.

2. The principal defendants, who had obtained the transfer of the jotes, averred in their written statements the existence of a custom of transferability in that village and other villages in its vicinity, and contended that the plaintiffs' suit should be dismissed. It is unnecessary to refer to the other pleas taken in their answers.

3. The Munsif framed several issues and, in a careful and, as it seems to us, a well considered judgment, came to the conclusion that the defendants had successfully established the custom or usage alleged by them recognizing the transferability of occupancy jotes. In dealing with this question, he relied not only upon the evidence adduced on the defendants' side, but also on certain kobalas

executed in favour of the plaintiffs themselves by which they had obtained transfer of occupancy jotes, and in conclusion he added: As the tenants do not pay rent at the rates demanded by the plaintiffs, the latter have betaken to themselves the contrivance of harassing the tenants and coercing them to submission by such suits like the present, which unfortunately have become too common in this part of the country."

4. The plaintiffs appealed to the Officiating Judge of Pubna who has, in an elaborate judgment, dealing with a variety of questions which do not seem to us to be really pertinent to the matter, come to the conclusion that the plaintiffs were entitled to recover in this action. The grounds upon which he held against the defendants seem to be of a three-fold character: firstly, (sic) opinion that the evidence given by the defendants regarding the custom (sic) of transferability being limited to only ten or twelve years or even (sic) worthless; secondly, that the evidence, which the defendants purported (sic) u/s 48 of the Evidence Act, was inadmissible; and, thirdly, (sic) that portion of the case upon which the Munsif relied with some(sic)amely transactions in favour of the plaintiffs themselves, he was (sic) on that they could not support the allegation of custom or usage, (sic)as the plaintiffs were themselves the proprietors, and might be (sic)posed to have assented to the transfers in their own favour.

5. The question which the District Judge had to try was dealt with in the case of Dalglish v. Guzuffer Hassain (1896) ILR 23 Cal 427, by Trevelyan and Beverley, JJ., and although he does not seem to approve of that decision, we consider ourselves bound to follow the principle enunciated by those learned Judges. In that case also the Munsif had held against the plaintiffs, who were seeking to recover khas possession. He had held that the defendants as ryots had sufficiently established that there was a usage in the neighbouring villages, recognizing the transferability of occupancy jotes. In that case also the Subordinate Judge had thought that the evidence regarding usage, being limited to a very short period of time, was of no value. This Court in construing Sections 183 and 178 of the Tenancy Act, held in effect that in order to establish "usage" at all events it was not necessary to require proof of its existence for any length of time. With that view we desire to express our entire concurrence. They say "the word "usage," at any rate, would include what the people are now or recently in the habit of doing in a particular place. It may be that this particular habit is only of a very recent origin, or it may be one which has existed for a long time. If it be one regularly and ordinarily practised by the inhabitants of the place where the tenure exists there would be "usage within the meaning of the section. The evidence which the learned Subordinate Judge has excluded on the ground that it does not refer to ancient custom is, we think, evidence which requires consideration inasmuch as it may establish local usage."

6. The Judge, in the present case, has done exactly what the Subordinate Judge had done in the case before Trevelyan and Beverley, JJ., and we think that the evidence which the District Judge thinks to be of little or no value, required

consideration in connection with the other circumstances and facts appearing in the case.

7. In the second place the District Judge is of opinion that, in order to make a statement admissible u/s 48 of the Evidence Act, it must relate to custom. The learned Judges in *Dalglish v. Guzuffer Hassain* (1896) ILR 23 Cal 427, held that the evidence to which they were directing their minds, and which related to usage, was admissible u/s 48 of the Evidence Act. We think in the present case also the statements made by persons who were in a position to know of the existence of a custom or usage in their locality were admissible. For example, a person, who had been in the habit of writing out deeds of sale, or one who had been seeing transfers frequently made, would certainly be in a position to give his opinion whether there was a custom or usage in that particular locality, and we think that the opinion of such persons would be admissible, as pointed out by the learned Judges, u/s 48 of the Evidence Act.

8. Then, again, it seems to us the District Judge is in error in putting aside from consideration the transfers made in favour of the plaintiffs on the ground that they may be supposed to have been assented to by the plaintiffs by virtue of their being proprietors. Admittedly one of the kobalas, namely, that of the year 1296, was executed prior to the putni settlement obtained by them in 1297. On the whole, therefore, we think that the judgment of the District Judge ought to be set aside, and the case sent back to him for a determination of the question at issue in the light of the observations we have made. Costs to abide the result.