
(1895) 05 CAL CK 0008
In the Calcutta High Court

Prosunno Kumar Adhikari and Others	APPELLANT
Vs	
Saroda Prosunno Adhikari and Others	RESPONDENT

Date of Decision : 21-05-1895

Acts Referred:

Citation : (1895) ILR (Cal) 989

Hon'ble Judges : Stevens, J; Pigot, J

Bench : Division Bench

Judgement

Pigot and Stevens, JJ.—In this case we think the appeal must succeed.

2. The lease granted by the ancestor of the plaintiffs to one of his co-shebaits, the validity of which is challenged in these proceedings, has been held to be bad, inasmuch as it was a mokurari lease granted without any legal necessity by the shebait of an endowment, the grant of which has been clearly made out. But in the judgment of the lower Court, and the decree founded upon that, the mourasi character of the lease has been preserved, so that the permanent character of the alienation of the property of the endowment lasts, although as to rent the character of the original lease was modified by striking out the mokurari provision of it, and making the lease liable to enhancement. But we think in allowing the validity of the lease, in so far as it gave a mourasi title, the Court below was in error. There are cases in which a shebait or manager is justified in alienating a portion of the property of the endowment; but this is not such a case, nothing of that character is made out; and we think it cannot be doubted that, in so far as this lease is a mourasi lease, it does amount to an alienation of the property of the endowment, and as such we think it must be held to be bad. Therefore, the lease must be declared to be bad wholly, and not merely in respect of its mokurari character.

3. Then the plaintiff's ask for khas possession, and as to that we have felt some difficulty upon a matter which does not clearly come out in the case before us. It appears that, long before 1240 (the year when this lease was granted) the different shebaits had come to what is called a partition, the exact nature of

which is not before us. We assume that it was a partition which in no way contravened, in favour of any of the parties to it, the endowment of which they were trustees, and that the rights amongst themselves of the parties to that partition were rights only of occupation, management, or custody in respect of the portion of the debutter land which, under that partition, each of them held in his sole hands, sole possession, sole custody (to distinguish it from title which, of course, could not spring from such an agreement). A part of the land, which came into the custody of the plaintiffs' predecessor under this partition is the land the subject-matter of this suit, and the case of the plaintiffs is that they are entitled to khas possession of this land upon the lease granted by their predecessor being set aside, inasmuch as the old state of things reverts into existence as soon as the lease which changed it is put an end to. We have not got the circumstances before us sufficiently to form a judgment upon this matter, nor was it raised in such a way as to enable us to deal with it. It is very possible that, as between the plaintiff's and defendants, the plaintiffs may be in some way, so far as any right of separate custody or enjoyment of the partitioned land is concerned as between themselves and defendants, bound towards the defendants by the act of their ancestor, in so far as the interest of the endowment shall not be affected, to make good, so far as can be done consistently with those interests, possession of the land illegally conveyed by the lease: and in allowing the appeal and in setting aside the decree of the lower Court we must do so without prejudice to any right that may exist as between the plaintiffs and the defendants not in question in this suit, and arising by reason of the making of the potta of Baisakh 1240, in respect of the land therein leased, and in respect of the plaintiffs' right of occupation or enjoyment thereof in virtue of the partition mentioned in paragraph 2 of the plaint. As to that we say nothing, and can say nothing, and we merely refer to it in order that, so far as we can do so, we may leave such rights, if any, of the defendants in that particular, untouched by this decision, but the appeal must be allowed with costs, and the cross appeal in No. 2364 dismissed with formal costs, no pleaders' fee being allowed.