

(1935) 05 CAL CK 0008
In the Calcutta High Court

Raja Jagadish Chandra Deo Dhabal Deb	APPELLANT
Vs	
Srinath Chandra Pani and Others	RESPONDENT

Date of Decision : 03-05-1935

Acts Referred:

Citation : 166 Ind. Cas. 878

Hon'ble Judges : S.K. Ghose, J;M.N. Mukerji, J

Bench : Division Bench

Judgement

1. The suit which has given rise to this appeal relates to a hat in Mouzah Parihati, which is one of the mouzahs of Pargana Dhalbhum of which the plaintiff is the proprietor. Raja Satrugan Deo Dhabal Deb, a former proprietor of the Pargana had let it out in ijara right for a period of 25 years to one Mr. Mathewson on March 8, 1905. Mr. Mathewson transferred his said rights to the Dhalbhum Syndicate on June 8, 1905, who in their turn sold their rights to the Midnapore Zemindari Company on March 12, 1909. On the expiry of the ijara on September 14, 1929, the Company relinquished possession of the estate in favour of the plaintiffs, the present proprietor.

2. The plaintiff's case as laid in the plaint, put quite shortly, is the following: In 1877 a part of Mougah Parihati which was their hasil was let out in Prodhani right to Raghunath Nath Pani, father of the defendants Nos. 1 and 2 by the Managar of the Court of Wards who was in management of the estate on behalf of the then proprietor Raja Ram Chandra Deo Dhabal Deb, a minor. Raghunath Nath Pani executed a kabuliyat on September 1, 1877, in favour of the Deputy Commissioner of Singhbhum for a period of 7 years, and entered upon his duties as Prodhan, and after acting as such for a year, that is to say, idealising the income, paying the landlord's share and appropriating his Prodhani remuneration--died. On September 13 1878, his son, the defendant No. 1, Srinath Pani executed a fresh kabuliyat for a period of 7 years on similar terms as were contained in his father's kabuliyat and took up his office as Prodhan. Soon after Raja Ram Chandra Deo Dhabal Deb attained majority, and got his

estate released from the Court of Wards, but the estate was again taken over by the Government under the provisions of the Chota Nagpur Encumbered Estates Act. The period of his kabuliyat having expired with the end of the Fasli year 1291 the defendant No.1 on 4th Falgoon 1291 B.S. (February 15, 1888) executed a Dowl. In the kabuliyat the quantity of hasil land for which the Prodhani settlement was made was put down as 468 bigahas 10 cottahs and the income thereof being taken as Rs. 230-4 annas, 3 pies, 20 per cent, thereof was set down as Prodhani remuneration, and the balance Rs. 181-4 annas together with some other small charges was made payable to the proprietor. In the Dowl the total quantity of cultivated land was stated to be 529 bighas, 19 cottas 12 chittaks, the income as Rs. 2865-12 annas the remuneration at 20 percent, and the balance with other small charges payable to the proprietor was Rs. 216 12 annas 5 g. This Prodhani settlement was renewed from time to time. The plaint then stated the following:

It was definitely understood that the Prodhan would realise the income of the estate from the hasil lands only and would retain the percentage of Prodhani remuneration and deliver to the estate the balance according to the instalments agreed upon. That it was agreed upon that the Garabandi Patit Jungle lands, Bunds and banks in the mouzah should remain in the khas possession of the proprietor. The Proihan would have nothing to do with the same except keeping guard to protect the interest of the proprietor.

3. The engagements just described continued during the term of the ijara for 25 years spoken of above. During the cadastral survey operations the records of which were finally published in 1908, a hat was found to exist on C.S. plot No. 572 of the mouzah and it was recorded as in the khas possession of the Dhalbhurn Syndicate, the ijaradars. In 1908 the Syndicate through their Tehsildar realised the income of the hat. In 1313 (=1997) the Syndicate gave a settlement of the hat to the defendant No. 1 for 5 years authorising him to take the income subject to a payment of Rs. 300 a year. The defendant No. 1 paid Rs. 25 a month to the Syndicate for the months of Jaith to Magh of that year and also some further sums, but subsequently refused to execute a proper kabuliyat. The rights of the Syndicate having been transferred to the Midnapore Zemindari Company, the latter in the year 1915 instituted a suit against the two defendants for ejecting them as trespassers. The suit ended in a compromise by which they agreed to pay annually Rs. 1,300 as income of the hat and also agreed to certain other conditions. The defendants, however, in excess of their rights and in breach of the terms of the said compromise had been gradually removing the hat from C.S. plot No. 572 and had been extending the hat to some culturable and other lands of the mouzah, viz. C.S. plots Nos. 108, 107, 108, 109, 95, 110 and 113. Consequently, on the expiry of the 25 years ijara, the plaintiff having got his estate freed from it, caused notices to be served on the defendants once in October 1929 and again on February 11, 1930, and instituted the present suit. The prayers in their substance were the following :

(a) That the plaintiff's title as proprietor be declared in respect of C.S. plots Nos. 572, 106, 107, 108, 109, 95, 110 and 113 of the mouzah.

(b) That the defendants be evicted from C.S. plot No. 572 and awarded mesne profits, and

(c) That a permanent injunction be granted restraining the defendants from holding the hat in any land including C.S. plots Nos. 108, 107, 108, 109, 95, 110 and 113.

4. The other two defendants namely Nos. 3 and 4 were two shop-keepers, the former having a grog shop and the latter a tailor's shop in the hat.

5. The plaint, whatever the merits of the allegations made in it may be, is not difficult to comprehend. That cannot, however, be said of the written statements of the first two defendants, which are principally concerned with denying every single statement made in the plaint and are full of inconsistent statements, prolix and verbose. The principal points that may be gleaned from these two written statements, that of the defendant No. 2 being somewhat fuller than that of the defendant No. 1, are the following—The Prodhani right to the mouzah was originally acquired by one Bihari Lal Panda under a grant from the then proprietor, Raja of Dhalbhum dated the month of Mesh (Baisach) 1195 B.S. the right being a permanent, heritable and transferable tenure right to the entire mouzah, including all cultivated and non-cultivated lands. Bihari was succeeded by his widow Parbati, and Parbati was succeeded by her daughter Gangamoni; Gangamoni made a gift of the tenure to Raghu Nath, from whom the two defendants inherited it. The kabuliati of Raghu Nath was denied but it was alleged that the Court of Wards had at that time revised all Prodhani settlements in the Pargana without regarding the existing rights of the Prodhan. Defendant No. 1's own kabuliati was impugned as having been executed without knowledge of its contents. The Dowl was repudiated as a forged document. As regards the hat, it was asserted that it was established in 1260 B.S. by Kartic Chandra Pani grandfather of the defendants Nos. 1 and 2 on the land of C.S. plot No. 572 under a sanad granted by the then proprietor of the estate. It was also alleged that as the hat increased in importance other markets began to be established since 1906, and that there are such markets in C.S. plots Nos. 107, 108, 109 and 110, but not in any of the other four plots also mentioned in the plaint, and further that these markets had nothing to do with the hat but were different therefrom. It was pleaded that it was within the authority of the Prodhan to establish such hats on Prodhani lands. It was denied that there was any extension of the hat on any cultivable or bastu lands of the mauzah. The settlement of the hat with the defendant No. 1 in 1313 and payment of money to the ijaradars or their officer was denied. The compromise in the suit of 1915 was assailed as having brought about by coercion and undue influence.

6. In the written statements of the defendant No. 3 it was pleaded that he had a liquor shop in the hat in C.S. plot No. 572 which he holds on hire from the

defendant No. 2, and want of notice and of a cause of action was also pleaded. The defendant No.4 did not appear.

7. The Subordinate Judge having dismissed the suit, except as regards the prayer for a declaration of the plaintiff's proprietary right, the plaintiff has preferred this appeal.

8. The judgment then discussed the evidence and proceeded.

9. The Prodhani tenure in the present case had been in existence from long long before 1877; and Raghu Nath's kabuliyat of 1877, the defendants kabuliyat of 1878 and the defendant No. 1's Dowl of 1888 cannot be treated as independent engagements overriding the previous relations between the proprietor and the Prodhan.

10. The next question is, what are the incidents of Prodhani right? The general features of a Prodhani tenure are described in the District Gazetteer of Singhbhum and the Final Report of the Survey and Settlement Operations of Pargana Dhalbhum, extracts from which have been reproduced in the judgment of the Subordinate Judge. But Prodhani tenures not being statutory tenures, the incidents of any particular tenure must largely be the creature of custom of contract. No custom has either been pleaded or attempted to be proved. And as regards contract there is no evidence of the contract under which this tenure was originally created. Their Lordships here again discussed the evidence and proceeded.

11. The question in the present case is not what the rights and liabilities of the plaintiff and of the defendants are with regard to the hat as it now stands but whether the prayers or any of them which the plaintiffs have made in their plaint should be granted. The plaintiff resumed possession of the estate on the expiry of the ijara for 25 years. He alleges that he served a notice on the defendants Nos. 1 and 2 in October 1929, but it is on a late notice served on February 11, 1930, delivery whereof was refused by the two defendants that the suit is founded. That notice is important. After reciting the plaintiff's own title and the solenama of 1915, it ran thus:

At that time the, said, hat stood on the land of Settlement Survey dag No. 572 and it stilt stands on the said Dag. You have wickedly extended the area of the hat over lands which are close to and adjacent to the said dag and have been in possession thereof, the, said act of years is illegal under the terms of the solenama and in law. It is apprehended that if you remain in possession oil the said has for a long time, you will commit further acts of injury to the hat. On the expiry of the term of the ijara I have become entitled to get khas possession of the said hat. So you are given notice that my officers will enter into possession on my behalf of the said hat on the said Dag No.572 on the 1st Chaitra next. I have right to stop the work of the hat, if any portion of the hat exists over the adjoining lands. You shall not be competent to establish or run any hat o ser any land within the mouza; if you run any, you shall be liable for damages and be

punishable according to law,

12. The following points arise upon the terms of the notice:

(a) The plaintiff takes his stand upon the solenama and states that at the date of the solenama the hat stood on C.S. Plot No.572 only and that the act of the defendant in extending the hat over lands which are close to and adjacent to the said plot is in breach of the terms of the solenama.

(b) It is stated that extension of the hat to plots other than C.S. plot No.572 is an act of injury.

(c) It is also said that as the Ijara has expired, the plaintiff has the right to take khas possession, and

(d) It is said further that the plaintiff has the right to stop the hat if any portion of it exists over adjoining lands.

13. The attitude taken in the plaint is different. In the plaint it is stated in para. 13 that:

The plaintiff is not bound by all the acts of the ijaradar Company, and any thing done between the said Company and the defendants Nos. 1 and 2 cannot operate as a bar to the plaintiff's action.

14. This averment has been made obviously with the object of attracting all extensions of the hat over any plot over, the C.S. plot No. 572, no matter what be the nature of the plot extended upon, i.e., cultivated of khaspalit or anything else and no matter whether the extension was made before the solenama or after it. It has been made also with the evident object of getting rid of the solenama as a whole, and of avoiding the statement in the notice that at the date of the solenama the hat stood on C.S. plot No. 572 only.

15. The substance of the prayers in the plaint has been already stated. These which require consideration now are: 1st. Eviction of the defendants from C.S. plot No. 572; and 2nd. injunction against holding or continuing the hat upon any land including C.S. plots Nos. 106, 107, 108, 109, 110, 113 and 95.

15. So far as the first of these two prayers is concerned, it is not possible to grant it so long as it is held, as we have already held, contrary to the plaintiff's case on the point, that the Prodhani tenure extends to the whole of the mouza. This plot is a part of the khas patit lands, of the mouza, and the defendants eviction from this plot only leaving the rest of the tenure intact is obviously out of the question. In para 12 of the plaint it was alleged that the defendants Nos. 1 and 2 were inducing vendors to sell their commodities on the other plots "so as to gradually and imperceptibly change the site of the hat and to leave C.S. plot No. 572 vacant." This apparently is the injury of which the plaintiff complained in the notice when he stated therein that the extension of the hat over the other lands was an injury to the hat as it WAS on the said plot. The plaintiff, therefore, seems to be desirous of continuing the hat on C.S. plot No. 572 and not of

stopping it so far as it is held there. For that, the eviction of the defendants from that plot is not the appropriate remedy. It should be noted that this suit was not meant for enforcing the plaintiff's right to the hat or its income, or the cancellation of the Prodhani tenure itself on adopting the methods which the law will permit.

16. As regards the second prayer, it should be stated at the outset that the defendants do not claim C.S. plots Nos. 106, 95 and 113 as appertaining to the hat, nor is there any evidence that any hat is held on any of these plots or any other lands of the mouza except C.S. plot No. 572 and the other four plots, namely C.S. plots Nos. 107, 103, 109 and 110. The question of injunction therefore has to be considered only with reference to the four plots last mentioned. These plots though at some time or other they were cultivated lands and jotes of other persons have since been acquired by the defendants Nos. 1 and 2 and are now held by them either in khas or as jotes. Taking together all the grounds which are set out in paras 11 and 12 of the plaint as grounds for the injunction, they amount to these: (1) Prodhani lands are to be used by the Prodhan only for the purpose of cultivation and the Prodhan has no right to establish a hat on Prodhani land without the proprietor's permission; (2) the extension of the hat to these plots was in contravention of the terms of the solenama of 1915; and (3) the said extension will be productive of injury to the hat on C.S. Dag No. 572. As regards the first of these grounds its strength has been considerably taken away by the statements contained in para of the plaint as has been already pointed out. Again taking the Prodhan as a tenure-holder in respect of the entire village it is far from clear that the holding of a hat in these few plots, all of which now belong to the defendants Nos. 1 and 2, is any such use of the lands as may be held to amount to withdrawing of an unreasonably large area from cultivation which would justify the granting of an injunction. A hat, after all, is a useful institution which is run for the benefit of all the villagers, and unless a proper case favouring an injunction is satisfactorily made out, no injunction ought to issue. So far as the second ground is concerned, it is enough to state that the learned Subordinate Judge has found on the evidence in the case, and that finding has not been disputed before us, that the extension of the hat on these plots had taken place long before the date of the solenama. No injunction, therefore, can be justified on the ground that the extension has been in breach of the terms of the solenama. In respect of the third ground all that need be said is that there are no materials on which it may be held that the extension has actually affected the hat on C.S. plot No. 572 or that the extended portions are not appanages to the old hat, all existing and flourishing for the benefit of the Prodhan himself as well as of the proprietor. In our judgment no case for injunction has been made out as regards the plots in question.

17. In the result we hold that the decision of the learned Judge dismissing the suit except as regards the prayer for declaration of title is right. The appeal is accordingly dismissed with costs.