

(1921) 08 CAL CK 0020
In the Calcutta High Court

Raja Sasi Kanta Acharjya Bahadur

APPELLANT

Vs

Sandhya Moni Dasya and Another

RESPONDENT

Date of Decision : 10-08-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 102, 102(6), 103B(3)

Citation : AIR 1921 Cal 236 : 65 Ind. Cas. 4

Hon'ble Judges : Lancelot Sanderson, C.J.; Chotzner, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is an appeal from the judgment of the learned Second Additional District Judge of Mymensingh; and, the suit was brought for the purpose of obtaining khas possession of the lands in dispute".

2. The defendant in one case was Brindaban Chandra De Sarkar, and the defendant in the other case was his wife; and, it has been found that she was a benamdar for her husband, and the two cases have been treated as if Brindaban was the occupier of both the pieces of land.

3. The First Court dismissed the suit: and upon appeal to the lower Appellate Court, the decision of the First Court was upheld, and the appeal was dismissed.

4. The case raises a point of considerable interest, inasmuch as the Record of Rights, which was published in February 1918, described the character of the holding in each case as chandina, an expression which in this part of the district Was, apparently prior to the entry in the Record of Rights, unknown. There was considerable discussion as to what was the meaning of the word, but the learned Additional Judge for the purpose of his judgment said that he was prepared to hold, though with a certain amount of doubt, that the view urged by the plaintiff was correct, namely, that by chandina the Settlement Authorities meant bazar land not subject to the provisions of the Bengal Tenancy Act.

5. The first point, that the learned Vakil for the appellant has urged, is based upon Sections 103B (3) of the Bengal Tenancy Act, which provides that "Every

entry in a Record of Rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect": and, the argument was to the effect that the learned Judge in the lower Appellate Court had ignored that section and held that in this case the entry in the Record of Rights created no presumption. The words of the learned Judge may be cited: he said, "whatever land is dealt with by the Settlement Authorities as falling under the Tenancy Act, the law says that the various entries made are to be presumed correct until the contrary is shown. But I know of no authority for the view that if the Settlement Authorities decide that the land is not held under the Tenancy Act at all, the view should be deemed correct." My learned brother and I have had some difficulty in understanding how this entry came to be made by the Revenue Officer, if the word "chandina" is to be taken to bear the meaning which the learned Judge in the lower Appellate Court put upon it. If the Revenue Authorities understood that it meant bazar land which was not subject to the provisions of the Tenancy Act at all, it is difficult to understand why they entered it upon the Record of Rights which was made in connection with lands which are subject to the Tenancy Act. The explanation of it may be that the Revenue Officer had not then the advantage, which the two lower Courts had, of the discussion as to what that word really meant, and the entry may have been made under a misapprehension as to the real meaning. However that may be, the entry was made, and there it stands; and, the question is whether the learned Vakil for the appellant is right when he says that presumption must be made that this description of the holding is correct until evidence is given to prove the contrary.

6. Dr. Bysak, the learned Vakil for the defendant, has contended that the learned Judge was right in holding that no presumption arose for the reason that Section 102 of the Bengal Tenancy Act describes the particulars which are to be recorded in the Record of Rights. It describes the classes of tenants with which the Record of Rights is to deal; and, for the purpose of seeing what classes of tenants are to be dealt with, he referred especially to Clause (6) of Section 102, and he urged that it is only with regard to what I might call proper entries, e.g., the entries which ought to be made and could be made in accordance with the provisions of the Bengal Tenancy Act, that the presumption which is referred to in Section 103B (3) would arise. No authority directly upon this question has been cited to us, and consequently it is not unreasonable to assume that the learned Judge was correct when he said: "I know of no authority for the view that if the Settlement Authorities decide that the land is not held under the Tenancy Act at all, the view should be deemed correct." The only authority, in any way touching the question, which was cited to us, is the case of *Bipradas Pal Chowdhry v. Azam Ostagar* 52 Ind. Cas. 412 : 46 C. 441 a decision of my learned brother Mr. Justice Woodroffe and Mr. Smither when he was acting as a Judge of this Court. There Mr. Justice Woodroffe said: "The Legislature contemplated, I think, that only three classes of tenants should be regarded as holding lands within the meaning of the Bengal Tenancy Act, viz., a tenure-holder who has been held to

mean a person collecting rents from raiyats, raiyats holding lands for the purpose of cultivation and under raiyats holding under them." Again he said: "there seems to me no doubt that in its general scope the Bengal Tenancy Act is a law for agricultural landlords and tenants." Basing his argument upon that, the learned Vakild for the defendant has supported his proposition that if an entry has been made in the Record of Rights with regard to land which does not come within the scope of the Bengal Tenancy Act and with regard to which the Revenue Officer had no jurisdiction to make the entry, no presumption arose u/s 103B (3) of the Bengal Tenancy Act. I am not prepared to go to far as to say that in this case no presumption arose from the entry in the Record of Rights, but I am prepared to say that the presumption cannot be of such great weight as would be the case if the entry were with regard to matters which are rightly and properly included in the Record of Rights, In this case, the First Court went so far as to hold that the entry was clearly wrong. Upon that point the learned Judge in the lower Appellate Court has not expressed any definite opinion, as I understand, because he came to the conclusion that no presumption ought to be drawn from the entry. But he discussed the evidence and came to the conclusion that if he had to rely upon the statement of the defendant alone, he would have had difficulty in finding in favour of the defendant. He, however, drew attention to the fact that the plaintiff was a landlord with large possessions and it was an extraordinary thing that the papers which would have shown the origin and the nature of the tenancy had not been produced. That was the point upon which the First Court relied to a large extent, and held that the non-production of these papers is to be regarded as a matter which must weigh heavily against the plaintiff's case. Taking that together with the evidence of the defendant, the learned Judge in the lower Appellate Court came to the conclusion, as I read his judgment, that the defendant had proved that the statement in the Record of Rights was rebutted and that the lands in question were either jote lands or homestead lands, Consequently, the first point, in my judgment, which the learned Vakild for the appellant urged is not sufficient to justify us in allowing this appeal or even in directing a remand.

7. Then there was a further point which the learned Vakild raised. He urged that the facts were not sufficiently found by the learned Judge in the lower Appellate Court. He referred to the finding that the lands must be taken either as jote lands or as homestead lands and that the finding that the lands are homestead lands, by itself, is not sufficient, because in order to bring them within the purview of the Bengal Tenancy Act, that must be homestead lands occupied either in connection with agriculture or for purposes of agriculture. In my judgment, although the learned Judge's words are not quite as definite as they might have been, reading the judgment as a whole, I have no doubt that the learned Judge meant to find, and did find as a matter of fact, that the lands were agricultural lands and that the homestead was used in connection with agriculture to some extent. I come to that conclusion upon the words of the judgment itself, and I am fortified in that conclusion by the finding of the First

Court that the defendant actually used these lands partly for shop and partly for raising crops. Under those circumstances, the finding of the lower Appellate Court is sufficiently definite: and, I think that the learned Judge found that the holdings were not chandina but that they were holdings which came within the purview of the Bengal Tenancy Act, and consequently the plaintiff was not entitled to a decree for possession in accordance with the claim which he preferred.

8. The result is that in my judgment for the reasons that I have given the appeal should be dismissed with costs.

9. The other appeal will follow the event of this appeal, and it is accordingly dismissed with costs,

Chotzner, J.

10. I agree.