
(1927) 01 CAL CK 0025
In the Calcutta High Court

Raja Sati Prasad Garga Bahadur

APPELLANT

Vs

Broja Gopal Dalapati and Others

RESPONDENT

Date of Decision : 04-01-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Section 111A, 115

Citation : AIR 1927 Cal 458

Hon'ble Judges : Mullik, J; Mallik, J; Duval, J

Bench : Full Bench

Judgement

Duval, J.—This appeal arises out of a suit brought by the plaintiffs for a declaration that the entry in the record-of-rights declaring them as occupancy raiyats was wrong and that they should be recorded as mokarari mourasi raiyats or raiyats at fixed rates. The area of the holding is 14 bighas at a rental of Rs. 56-9-0. The record-of-rights was finally published on the 9th April 1917 and this suit was brought on the 22nd December 1922. The learned Munsif dismissed the suit holding that as there had been a record-of-rights finally published, Section 115 of the Bengal Tenancy Act applies and that, therefore, there was no presumption u/s 50 and that as the plaintiffs had failed to prove uniform payment of rent back to the time of the Permanent Settlement, they were not entitled to have a decree.

2. In appeal the learned District Judge held that the suit was one u/s 111A of the Bengal Tenancy Act, which could correct any entry in a finally published record-of-rights and so Section 115 of that Act was no bar because the record-of-rights was not finally settled until after the-suit had been determined in respect of this entry. He further held that the presumption u/s 50, Sub-section (2) could apply and decreed the suit. Apart from the Bengal Tenancy Act the person aggrieved by an entry and who has failed to avail himself of the means given him to correct the wrong entry under that Act cannot be denied his right to bring an ordinary civil suit. But the power to bring an ordinary civil suit instead of availing oneself of the remedy given him in Chap. 10 of the Bengal Tenancy Act! would result in a

declaration only. It: will not force the revenue authorities to; alter their finally published record-of-rights. Now 8. III A forbids the bringing of such suits under the Bengal Tenancy Act except in the case of where there has been a settlement of land revenue u/s 101, Sub-section (2). There was no settlement of land revenue in this case and therefore I am unable to agree with the learned District Judge in holding that this suit can be treated as one under the Bengal Tenancy Act and not merely as an ordinary civil suit.

3. The Judge has referred to the case of Secy. of State v. Kazimuddi [1899] 26 Cal. 617 which laid down that the provision contained in Section 115 of the Bengal Tenancy Act against the presumption as to fixed rent u/s 50, Sub-section (2) of the Act has no application in a suit brought by a tenant for the purpose of contesting the correctness; of the decision of the revenue authorities-in regard to the entry as to the status of a raiyat in a record-of-rights. This decision, however, was passed in the first place before Section 111A had found its place-in Chap. 10 and also dealt with khas mahal tenancies where the land revenue-is not permanently fixed but is settled at each settlement. The case too has ever since the decision of the Full Bench in the case of Pirthi Chand Lal v. Basarat Ali [1909] 37 Cal. 30 not been followed. In that case the Eull Bench stated as follows:

The case of Secretary of State v. Kazimuddi [1899] 26 Cal. 617 is a case of a tenant claiming the benefit of the presumption u/s 50 in a suit to contest the correctness of an entry in a record-of-rights and has no direct application to the f iota of this case except so far as it rests on the view that Section 115 seems to contemplate a case in which a raiyat is seeking to get the benefit of the presumption for a period subsequent to the time when the record-of-rights was framed.

4. With this view I am unable to agree, for, in my opinion, it disregards the plain terms of the section which are general an expression and contain nothing to justify the limited construction that has been placed on them. Now Section 115 says:

When the particulars mentioned in Section 102, Clause (6) have been recorded under this chapter in respect of any tenancy, the presumption u/s 50 shall not thereafter apply to that tenancy.

5. Here there has been a finally published record-of-rights. No proceedings were; taken to alter the entry either before the : revenue Court or before the special Judge; or in any other way provided for in Chap. 10 and Section 111A distinctly forbids interfering with the record-of-rights in any other way except as provided for in the chapter and in that section. It appears to me, therefore, that it cannot be, said for a moment that the record-of-; rights and this entry had not been finally ;and properly determined some years before this present suit was brought. - This suit is merely a civil suit and, therefore, the presumption u/s 50 cannot arise. It is not seriously denied that if there is no presumption the tenant is unable to prove his contention.

6. The appeal is, therefore, decreed and the suit dismissed with costs in all Courts.

7. No order is necessary on the application as the party has already been added,
Mullik, J.

8. I agree.