

(1898) 04 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1431 of 1896

Ram Khelawan Roy and others

APPELLANT

Vs

Sambhoo Roy and others

RESPONDENT

Date of Decision : 22-04-1898

Acts Referred:

Citation : (1898) 04 CAL CK 0005

Final Decision : Dismissed

Judgement

1. In this case the suit was brought by a purchaser at a sale for arrears of Government revenue of a share in certain property. The Plaintiffs in their plaint alleged that the Defendants held the land sometimes as zuripeshgidars and sometimes as maliks, and that they had no kashtkan right. The Defendants denied that they ever held the land as zuripeshgidars or maliks, and averred that they held it by virtue of an ancient raiyati right which extended back for upwards of fifty years. The learned Subordinate Judge who first tried this case declined to believe any of the oral evidence adduced. His decision has been upheld on appeal by the District Judge. There remains to consider simply the documentary evidence.

2. With the exception of certain survey papers, to which we will presently refer, the only documentary evidence upon which any case has been sought to be made before us is a zuripeshgi poliali, dated the 6th December 1847. Although it is the case of the Defendants that they never held this land as zuripeshgidars, still they now contend that by virtue of that pottah they acquired a raiyati interest in this land. That pottah provides for a lease for a term of five years to Behari Rai and Garib Rai. It provides also that excepting one rupee, which is to be paid yearly to the proprietors the whole of the rent for those five years is to be taken by the zuripeshgidars on account of the profit of their zuripeshgi; that the zuripeshgi money, a sum of 499 rupees, must be repaid at the end of the five years; that if it is not so paid the zuripeshgidars would, by virtue of this deed, remain in possession until payment of the zuripeshgi and that this deed would

continue in force until such payment. There is in this document also a declaration that the thikadars, on getting into possession of the land, mango garden and jack fruit trees, will carry on cultivation properly.

3. The Defendants contend that that created a raiyati tenure and in support of that contention they rely upon a recent decision of the Privy Council in the case of *The Bengal Indigo Company v. Rogkobur Das* ILR 24 Cal. 272 : 1 C.W.N. 83. It is suggested that that decision is authority for holding that a zuripeshgi tenancy creates a raiyati right. But everything depends upon the particular document under consideration. Their Lordships said this (and we think this is the important portion of their judgment in reference to the present question):- "Their Lordships see no reason to differ from the views expressed by the learned Judges of the High Court to the effect that the leases in question were not mere contracts for the cultivation of the land let; but they were also intended to constitute and did constitute a real and valid security to the tenant for the principal sums which he had advanced and interest thereto on." These observations apparently had reference to that portion of the judgment of this Court which was as follows :-- "We know of no case where it has been held that the zuripeshgidar has been treated as a raiyat, and it would certainly be very hard upon a landlord if he should be so treated, as the landlord would be compelled after the expiration of the term to continue the tenancy at a rent instead of being able to get a new advance from some one else." We consider that the expressions, used by their Lordships of the Privy ("council, would show that it is only in cases of mere contracts for the cultivation of the land let, that a deed which might be called a zuripeshgi would create a raiyati interest. Here we have distinctly a security given for the money advanced. The purpose of this lease was not the mere cultivation of the land let. The purpose was to give the thikadars security for the advance made by them; and that was the real object of it. We think that that fact would prevent this lease from being treated as creating a raiyati interest. Their Lordships in no way disagree with the observations made by this Court to the effect that if leases of this kind were to be treated as giving a raiyati right to the thikadar after the money had been paid, the landlord, from the mere fact of his having once given his land as security for money lent, would be unable again to borrow on similar terms. Moreover, we think that the stipulation as to cultivation is not a stipulation as to the purpose of the lease. The purpose of the lease is to secure the money. This proviso operates as a covenant by the thikadars to keep the land in a proper state of cultivation and not to let it run wild, so that when the owner paid up the zuripeshgi money he might receive back the land undeteriorated in value.

4. The next question which has been argued before us is this :- It is said that the learned Subordinate Judge had wrongly declined to admit as evidence certain survey proceedings. In a separate decision which was given by him he not only recorded reasons for declining to admit these documents in evidence, but for holding that even if they were admissible, strictly speaking, they were of no value in the present case. That finding, although not referred to by the District

Judge, is not in any way departed from by him. In second appeal, therefore, we must take it that even if the Court below was wrong in not admitting these documents, still that would not alter the finding come to by it. Moreover even if we were to admit them, it is conceded by the learned vakil for the Appellant that no use could be made of them unless fresh evidence were allowed to be given; and no case has been made out for allowing fresh evidence.

5. The third ground taken, so far as we understand it, is this :--It is said that two out of four of the maliks redeemed their share of the zuripeshgi, the suripeshgidar continuing in possession as tenant : and it is argued that that, so far as those two maliks are concerned, created a raiyati interest in the land, and therefore ejectment cannot be effected excepting on the conditions on which ordinary raiyats are liable to ejectment. In effect this contention puts forward another mode of creating a raiyati tenure in this case. The point is entirely a new one. It was not suggested in the written statement, and it must depend on facts which have been disbelieved, because the oral evidence from beginning to end has been discredited. It must depend upon facts of some kind. If it depends upon the evidence on the record, that has been entirely disbelieved. If upon evidence not on the record, there is no reason shown for admitting fresh evidence. It is impossible in second appeal to allow an objection of this kind. The appeal is dismissed with costs.