

(1916) 03 CAL CK 0027
In the Calcutta High Court

Rani Debendrabala Dasi, executrix to this estate of Late
Kumar Srish Chandra Singha Bahadur and Another

APPELLANT

Vs

Lalit Mohan Ghose and Others

RESPONDENT

Date of Decision : 15-03-1916

Acts Referred:

Specific Relief Act, 1877 — Section 27(6)

Citation : 33 Ind. Cas. 593

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—In these six suits the plaintiffs claimed to recover, possession of lands which were formerly chowkidari chakran lands of the village but had been resumed by Government. The plaintiffs are the dar-patnidars having all the rights that were leased to the patnidars. The defendants are the zemindars and the tenants in occupation of the lands.

2. At the hearing of these appeals, three points only have been argued, having reference to the rights of the dar-patnidars to these lands under their leases, the question of limitation and the right to eject the tenant-defendants. The first point turns on the construction of the patni lease, Exhibit VII. It is conceded that it cannot be argued that chakran lands were excluded by the general terms in which the lands of the mauza were described. Reliance is placed on the following special clause: "That if any land or jama be excluded from this patni taluk under any law or order of Court you shall not be competent to raise any objection to the payment of the aforesaid jama on that account." In my opinion, the lower Appellate Court was right in holding that these words could not be held to be applicable, to the lands resumed by the Collector under the Chowkidari Act VI (B.C.) of 1870. Lands so resumed are not really excluded from the patni taluk. Under the Act, after resumption, the Collector is bound to re-settle them with the zemindar, subject to all contracts there before made; that is to say, subject to the patnidar's rights. I do not think that it was the intention of the parties that

these words in the lease should be made to refer to the mere temporary exclusion that occurs during the interval between the resumption by the Collector of the chakran lands and their re-settlement with the zemindar.

3. As regards limitation, the only point argued is that the cause of action must be held to have arisen on the date of the resumption. Admittedly, if it arose on the re-settlement or at any subsequent date, the suits were not barred. I cannot see how the resumption can be said to have given rise to the cause of action in these suits. By the resumption, the plaintiffs' right to these lands was in no way assailed. As I have already stated, the Collector is bound by the Statute to recognise the zemindar's right and the zemindar is also bound by the Statute to recognise the patnidar's right, if any, in the chakran lands. The cause of action could only arise on the zemindar showing by some act that he disputed the plaintiffs' right. In any case it could not possibly arise before the re-settlement.

4. The last point which was very strongly pressed is that the tenant defendants in these cases cannot be ejected. In support of this contention, reliance is first placed on the well known Full Bench ruling in *Binad Lal Pakrashi v. Kalu Pramanik* 20 C. 708 the leading case on the subject. That case has been shown to be inapplicable to cases of this sort in the two decisions relied on in the judgment of the lower Appellate Court, namely, in *Upendra Narain Bhattacharya v. Protap Chandra Pardhan* 8 C.W.N. 320 : 31 C. 703 and *Shaikh Jonah Ali v. Sakibuddin Mullik* 9 C.W.N. 571 : 1 C.L.J. 303. For the appellants, reliance is also placed on the cases of *Surendra Kumar Basu v. Kunja Behari Singh* 4 C.W.N. 818 : 27 C. 814 and *Bepin Behari Mitter v. Tinkowri Pathak* 9 Ind. Cas. 374 : 13 C.L.J. 271 : 15 C.W.N. 976. In my opinion, the two cases relied on by the learned Subordinate Judge are more applicable to the facts of the present case. In *Upendra Narain Bhattacharya v. Protap Chandra Pardhan* 8 C.W.N. 320 : 31 C. 703 the facts are the same on all the important points. In *Shaikh Jonah Ali v. Sakibuddin Mullik* 9 C.W.N. 571 : 1 C.L.J. 303 the facts are somewhat different; but the principles on which the decision is based are the same, namely, that the person whether the patnidar or the zemindar who obtained right to these lands has the right to decide whether they should be treated as raiyatee lands or not, and consequently the settlement by a person who has not this right cannot make the lands settled with tenants into raiyatee lands and, therefore, cannot give the persons settled on those lands the status of raiyats. Both these cases have been followed on this point, the former in a decision to which I was a party, namely, in *Hazari Lal Sarkar v. Khaunish Chandra Roy* 31 Ind. Cas 249 : 22 C.L.J. 290 and the latter in the case of *Kazi Newaz Khoda v. Ram Jadu Dey* 34 C. 109 : 5 C.L.J. 33 : 11 C.W.N. 201. Of the cases relied on by the appellants, the case of *Hari Narain Mozumdar v. Mukund Lal Mundal* 4 C.W.N. 814 though it has been followed more than once as regards the decisions relating to the terms of settlement between the zemindar and the patnidar, has never been followed as regards the decision that the tenants are entitled to remain in actual possession of the lands. The facts on which this decision is based are not stated at length and the case has been distinguished in the case of *Upendra Narain Bhattacharya v.*

Protab Chandra Pardhan 8 C.W.N. 320 : 31 C. 703 already referred to. The facts of the case of Bepin Behari Mitter v. Tinkowri Pathak 9 Ind. Cas. 374 : 13 C.L.J. 271 : 15 C.W.N. 976 are somewhat peculiar and were shown to be distinguishable from the cases of Upendra Narain Bhattacharya v. Protab Chandra Pardhan 8 C.W.N. 320 : 31 C. 703 and Shaikh Jonah Ali v. Rakibuddin Mullik 9 C.W.N. 571 : 1 C.L.J. 303.

5. It is further contended that, under Clause (6) of Section 27 of the Specific Relief Act, the tenants who have taken settlement of the land in good faith cannot be ejected by the plaintiffs when claiming their rights against their lessors. This section can have no application to the present cases which are not suits for the enforcement of contracts. The view that a suit by a patnidar for possession of chowkidari chakran lands is a suit to enforce a contract was taken in the case of Ranjit Singh v. Radha Charan Chandra 34 C.564 but in the case of Banwari Mukunda Deb v. Bidhu Sundar Thakur 35 C. 346 : 7 C.L.J. 439 : 12 C.W.N. 459 this case was clearly dissented from and it was held that such an action was not one for specific performance of contract but for possession of chakran lands included in the patni. In fact, when arguing the point of limitation, the learned Counsel for the appellants admitted that he could not support the view that had sometimes been taken that a suit of this nature is a suit on the contract and governed by the law of limitation relating to suits on contracts. It necessarily follows, therefore, that the provisions of Section 27 of the Specific Relief Act can have no application to the present cases. It is further argued that though the section itself might not be applicable, the principles underlying that section are principles of equity of general application. No doubt hardship may arise in cases where tenants are settled on the lands by a person who has no title specially if the person who has the title brings his suit just before expiration of the time allowed by the law of limitation, but the law is perfectly clear that possession without title for less than the statutory period is no bar to the rightful owner recovering what he is entitled to recover. The appeals, therefore, fail, and are accordingly dismissed with costs. I allow only two sets of costs, namely, four gold mohurs as hearing fee in all these six appeals.