

(1898) 08 CAL CK 0001

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 112 of 1897

Sarat Mohini Dassi

APPELLANT

Vs

Bhuban Mohan Ghose, and Others

RESPONDENT

Date of Decision : 26-08-1898

Acts Referred:

Citation : (1898) 08 CAL CK 0001

Final Decision : Dismissed

Judgement

1. Plaintiff, Appellant, and the Defendants, Respondents, are neighbouring zemindars between whom for some time various causes of dispute existed. On the 1st Assar 1299, they settled their disputes, and executed an agreement embodying the terms of the settlement. Amongst other matters between them, there was a dispute as to a bazar which the Plaintiff, Appellant, who is styled in the agreement the first party, had established in opposition to a bazar at Nuldi belonging to the Defendants called in the agreement the second party. It was agreed that the Plaintiff, Appellant, should abolish her bazar, and that the Defendants should pay her annually Rs. 25 in lieu of her income from that bazar. The Plaintiff at the same time undertook that, so long as this annual payment was continued, she would not establish any new bazar within two miles of the bazar of the Defendants. On the 23rd Assin 1300, the Plaintiff sold the site of her former bazar together with, some other" land, and, on that ground amongst others, the Defendants refused to make the payment of Rs. 25. The only question before us in this appeal is as to the Plaintiff's right to receive that payment since the time when she transferred the land. The following is a translation of the portion of the agreement which relates to this payment:--" Within the ilaka of the second party, there is a bazar at Nuldi, known as the Kalachand Pore Bazar. In the neighbourhood of the said bazar I, Srimati Sarat Mohini Dassi of the first party, last year established a rival bazar in the name of Moti Lall Goswami, which is now yielding a large income. But as all disputes between me and the second party are now settled, I abolish the said new bazar. In lieu of my income from the said new bazar, the second party shall from this

year pay to me, Sarat Mohini Dassi of the first party, annually Rs. 25 as a share in their income from the old bazar. If they fail (to pay the same), I shall realize it by institution of law-suit. The second party shall not be competent to raise any objection on the ground of the bazar yielding no income. If the second party abolish their present bazar and establish a new one in some other locality, that circumstance shall not free them from their liability to pay annually the said Rs. 25 due to me, Sarat Mohini Dassi of the first party. The said second party and their heirs and representatives shall be bound to pay from year to year the said Rs. 25 so long as the bazar will exist. If from any natural cause beyond the control of the second party, their bazar ceases to exist, the second party shall not be bound to pay the said Rs. 25 per annum. In the event of the bazar of the second party ceasing to exist from natural causes beyond their control, the first party will be competent to establish, a new bazar at any place they like. But so long as the second party shall continue to pay Rs. 25 per annum to me, Sarat Mohini Dassi of the first party, we, the first party, shall not be competent to establish in our own name or in the name of others any (new) bazar within two miles on each side of the existing bazar. At any other place within the ilaka of the first party, they shall be competent to establish a hat, and the second party shall not be competent to raise any objection or hinderance to the same."

2. We have taken time to consider our judgment, and we have come to the conclusion that, in any view, the Plaintiff is not entitled to a continuance of the payment in question. If the payment is to be considered as representing her income from the abolished bazar, it is not easy to see how she should be entitled to it after she has parted with the land on which that bazar stood. If, on the other hand, it is to be taken that, in consideration of the payment of Rs. 25 per annum, the Plaintiff undertook not to establish a new bazar within two miles of the Defendants' bazar, we think that she disentitled herself to a continuance of the payment from the time when she made it impossible for herself to secure the fulfilment of the condition by parting with her land. We think then that the view of the lower Appellate Court was correct, and we dismiss this appeal with costs.