
(1923) 05 CAL CK 0051
In the Calcutta High Court

Sashi Bhusan Hazra

APPELLANT

Vs

Kazi Abdulla and Others

RESPONDENT

Date of Decision : 22-05-1923

Acts Referred:

Citation : AIR 1924 Cal 328

Hon'ble Judges : Walmsley, J;Suhrawardy, J

Bench : Full Bench

Judgement

Walmsley, J.—This appeal is preferred by the plaintiff who has been unsuccessful in both Courts.

2. On 26th June, 1914, he bought the residuary share of Estate No. 1273 of the Burdwan Collectorate at a sale held under the provisions of Act XI (B.C.) of 1859. After his purchase he says that he obtained possession of all the land in the estate, but he was prevented by the defendants from taking possession of a tank known as the Rowta tank, and it was to obtain khas possession of this tank that the suit was instituted.

3. The defendants pleaded that the suit was barred by limitation, and that it was bad for defect of parties and on the merits that the tank did not appertain to the estate bought by the plaintiff, and that they had a lahkeraj right to it.

4. It was conceded in the first Court that the plea of limitation could not be sustained. On other points the learned Munsif found that the whole of the western bank and part of the northern bank were not included within the estate bought by the plaintiff, and that therefore the persons who own the western bank were not necessary parties. The remainder of the tank and the other banks he found to be included within the ambit of the plaintiff's estate. Then he came to the main question of the case, the question on which part lay the burden of proof, and he held that it lay upon the plaintiff, and that he had failed to discharge it. This was the question which was argued on appeal, and the learned Subordinate Judge gave the same answer.

5. It has been urged before us on behalf of the plaintiff that the Courts below are wrong and that the onus of proof really lay upon the defendants.

6. There is no dispute now about the provision of Act XI which defines the plaintiff's rights : it is Section 54, and according to that section "the purchaser shall acquire the share, subject to all encumbrances and shall not acquire any rights which were not possessed by the previous owner or owners."

7. The question as to whether the onus lies on the appellant-plaintiff or on the defendants has been argued before us with reference to two decisions by their Lordships of the Privy Council.

8. For the plaintiff it is urged that the decision in the case of *Jagdeo Narain v. Baldeo Singh* AIR 1922 P.C. 272 shows that the burden lies upon the defendants and attention is drawn in particular to the sentences. "In the present case, the lands in dispute lie within the ambit of the estate, which admittedly belongs to the plaintiffs and the pro forma defendants and for which they pay the revenue assessed on the Mouza. In these circumstances it lies upon those who claim to hold the land free of the obligation to pay rent to show by satisfactory evidence that they have been relieved of this obligation either by contract or by some old grant recognised by Government." Thus detached from their context the sentences seem to support the appellant. But when the judgment as a whole is studied, it is clear that the plaintiffs were not relieved of their obligation, for the earlier part was devoted to an exhaustive examination of the proceedings taken in 1838 under Reg. IT of 1819. Particular stress was laid on the fact that at that time no one claimed the malikanadari right claimed by the defendants, although there was an "investigation into the titles of all persons occupying lands on the allegation that they were not liable to the payment of rent." Then in referring to the presumption arising from the record-of-rights, their Lordships said just before the sentences quoted : "Once the landlord has proved that the land which is sought to be held rent-free lies within his regularly assessed estate or mehal, the onus is shifted." It seems clear therefore that mere proof of geographical situation was not regarded as enough the landlord had also to show that the land had been assessed, and it was only after he had done so that the burden was passed to the defendants.

9. In my opinion, this decision does not help the plaintiff: on the contrary, it supports the defendants, and it is not in conflict with the decision on which their learned vakil relies, namely, the case of *Hurryhar Mookhopadhyaya v. Madub Chunder Baboo* (1871) 14 M.I.A. 152. That decision reviews the legislation on the subject of invalid lakheraj grants, and touches on points with which we are not here concerned; towards the close it deals with the question of what the plaintiff has to prove, and it lays down that he must prove not merely that the land is within the ambit of his estate, but also that it formed part of the mal assets at the time of the decennial settlement. Not till he has proved both these points does the onus shift to the shoulders of the defendants.

10. It has not been urged that the Judge is wrong in his conclusions if he is right in laying the onus upon the plaintiff.

11. The result is that the appeal fails, and it is dismissed with costs.

Suhrawardy, J.

12. I agree.