
(1924) 08 CAL CK 0024
In the Calcutta High Court

Secretary of State

APPELLANT

Vs

Kali Narayan Roy Choudhury

RESPONDENT

Date of Decision : 19-08-1924

Acts Referred:

Citation : AIR 1925 Cal 273 : 85 Ind. Cas. 211

Judgement

1. This is an appeal by the Secretary of State for India in Council against the decision of the Additional District Judge of Dacca, affirming the decision of the Subordinate Judge, 5th Court. Dacca. The suit arises out of certain resumption proceedings by which certain lands in the possession of the plaintiff was assessed to revenue. Both the Courts have held that these lands are not liable to such assessment and the plaintiff has been given a decree declaring his title to the land in suit. His title is declared in respect of some of these lands to be in taluki right, in respect of other lands to be by right of accretion. In the view we take it is not necessary to discuss at length the facts of the case.

2. The main facts as found are these:- The plaintiff is the proprietor of Mouzahs Mastul and Bailjuri. At the time of the Permanent Settlement the lands in suit were asli lands and were assessed to revenue. Some time after the Permanent Settlement but before the Thak Survey the river Dhaleswari, a navigable river, flowed over the land in suit. Subsequently the river receded and as it receded the Government claimed the right to assess the newly formed land to revenue. Some time after 1860 there was what is called a daimibundabust by which certain estates were created which were settled with the plaintiff's predecessor. The plaintiff claim-ed the land in suit partly as appertaining to certain estates dating from the Permanent Settlement and partly as appertaining to these so called daimibundabust estates. Having regard to the finding that all this land was asli land and was settled as asli land at the time of the Permanent Settlement and were then assessed with revenue it seems obvious that the Government has no right to make additional assessment of revenue on these lands. The plaintiff is undoubtedly in possession and it is immaterial whether these lands appertain to his estate or not. If these lands formed part of other estates, it is for the

proprietors of these estates to assert their rights and they will not be bound by the decision in this suit. The Government clearly can have no right to make assessment of this land and recover it from the plaintiff. The Government has in fact settled these lands in dispute with the plaintiff and the plaintiff has paid revenue on this assessment under protest. The Government therefore cannot deny the plaintiff's title to these lands. Under the Regulations the Government is bound to settle the lands with the proprietors even if they are accreted lands.

3. The lower Courts in our opinion have fallen into some error in the remarks they had made with reference to accretion. On the finding that the lands in suit were assessed to revenue at the time of the Permanent Settlement they cannot now be treated as accretions in the strict sense of the word. The plaintiff is entitled to these lands either as reformation in situ or possibly by adverse possession, but he does not base his title on accretion, since accretion of land to a permanently settled estate is liable to settlement of revenue. However, no cross-appeal has been filed and the plaintiff is satisfied with the decree which has been given to him which in fact given him all he wants, namely, a declaration that he is not liable to pay additional revenue for this land and is entitled to a refund of such revenue as has been wrongly paid.

4. For these reasons we must dismiss this appeal with costs.