
(1925) 12 CAL CK 0054
In the Calcutta High Court

Shib Chandra Banerjee

APPELLANT

Vs

Umesh Nath Roy and Others

RESPONDENT

Date of Decision : 04-12-1925

Acts Referred:

Village Chaukidari Act, 1870 — Section 59, 60, 61

Citation : 95 Ind. Cas. 536

Hon'ble Judges : Mukerji, J; Hugh Walmsley, J

Bench : Division Bench

Judgement

Walmsley, J.—These two appeals are preferred by the plaintiff, and they arise from two suits, Nos. 817 and 711, respectively, of the first Court. Those suits and three others, with which we are not concerned, were instituted on the grounds that the lands in suit formed chaukidari chakran lands until they were resumed by Government, that they were then settled by Government with the zemindar by whom they were leased to the plaintiff, and that the defendants are keeping the plaintiff out of possession. The claim was for khas possession, or in the alternative for a declaration that the defendants must pay a fair rent.

2. The defence was that the lands were not chakran lands, that in No. 711 the land in suit formed part of a jama of Rs. 11 standing in the name of Sheroo Sekh, and that in No. 817 they formed part of a jama of Rs. 73 odd in the name of Chandra Roy.

3. The identity of the lands in suit with certain plots of the land which the Collector purported to resume and settle with the zemindar was proved, and the learned Munsif held that their chakran character was determined finally. He then went on to hold that the defendants had not acquired any right by which they could "resist the plaintiff's prayer for khas possession and accordingly he decreed the suits for possession with mesne profits.

4. On appeal by the defendants the learned Subordinate Judge took a different view of the effect of the enquiry under the Chaukidari Act, and held that the

defendants had succeeded in showing that the lands did form part of the jamas mentioned by them. In No. 711 he held that the defendants had held the land as part of a jama under a lakherajdar for more than thirty years and he dismissed the suit altogether. In No. 817 he found that the defendants had been holding the lands as part of their jama for over twelve years, and he dismissed that suit also, but he added that he had no materials on which he could fix a fair rent, and that the plaintiff might, if so advised, ask for a fair rent to be fixed in a subsequent suit.

5. The main ground of appeal is that the learned Judge has taken an erroneous view of the provisions of the Chaukidari Act. The relevant sections of that Act are Sections 58 to 61. They provide for the appointment of a commission to ascertain and determine the chaukidari chakran lands, and define its powers, it is convenient to reproduce the Section 59 to 61: they are as follows: Section 59: Whenever in any district in which such Commission shall have been appointed, any question shall arise whether any or what lands are chaukidari chakran lands * * * it shall be lawful for such Commission to enquire into such question." Section 60. " In inquiring into such question the Commission shall, as far as may be necessary for the purposes of this Act exercise all such and the same powers as are conferred by Regulation VII of 1822 and the Regulations and Acts amending the same upon a Collector making a settlement of land revenue." Section 61. "Such Commission shall demarcate the boundaries of any lands which they may determine to be chaukidari chakran lands * * * and shall make orders under their hand setting forth the land which they shall have determined to be chaukidari chakran lands * * * and the boundaries thereof * * * *. Every such order shall be final and conclusive respecting all matters hereinbefore required to be set forth and in such order so far as the same shall be therein set forth."

6. In these appeals there is no dispute about the due appointment of a commission under the provisions of Section 58. The commission did demarcate the boundaries of the land determined to be chaukidari chakran land, and did make orders setting forth such land, and it has been found that the lands in suit are identical with plots set forth by the commission as chaukidari chakran lands. The question is whether those orders are final and conclusive in the sense that in these suits the defendants are debarred from asserting that the lands are not chaukidari chakran lands. The Courts below have taken divergent views, and the learned Judge in the lower Appellate Court has not only held that the Commission's decision is not final, but has even treated it as wholly negligible.

7. The same question was considered by this Court on very similar allegations in the case of Nobokrista Mukherjee v. Secretary of State for India 11 C. 632 : 5 Ind. Dec. 1180, and more recently in the case of Madhu Sudan Banerjee v. Girish Chandra Ghose 2 C. L. J. 302, and the decision in each case was that when there is compliance with the provisions of Section 61, the propriety of the order cannot be questioned in the Civil Court.

8. It is urged for the respondent, however, that those decisions are erroneous, and our attention is drawn to the case of *Hiralal Mukerji v. Premamoyee Debi* 2 C. L. J. 306 at p. 310 but with all respect to the learned Judge who delivered the judgment his remark must be regarded as obiter. It is also brought to our notice that in Section 12 of the Embankment Act (Act XXXII B. C. of 1855) and in Section 40 of the Indian Railways Act (Act IX of 1890) the words "final and conclusive" are followed by the words "and not open to question in the Civil Court " and shall not be, questioned in any Court respectively, and we are asked to infer from the absence of such words in Section 61 of the Chaukidari Act that the finality mentioned in that section must be limited to the Revenue Courts.

9. That form of argument I regard as fallacious. The words "final and conclusive" are not ambiguous, in themselves, and I do not think that any ambiguity can be imported into them, by showing that in other enactments strengthening words have been added to them, perhaps quite unnecessarily.

10. The question was considered again by Chatterjea, J. in S. A. No. 123 of 1909, decided on January 23, 1911, but he was sitting alone and felt bound to follow the decisions which I have mentioned. I do not think, therefore, that the judgment is of any assistance.

11. The position, therefore, is that there are two decisions directly on the point in favour of the appellant's contention, and we ought to follow them unless we think them wrong. Personally I think that they are right. I cannot find in the Chaukidari Act any reason for whittling down the meaning of the words "final and conclusive." As for the argument that the reference to Regulation VII of 1822 warrants the view that the words apply to the appeal provided by the first Clause of Section 29 of that Regulation and not to the civil suit mentioned in the sixth clause, I think it overlooks the fact that the powers conferred by Regulation VII are given to the Commission "in inquiring into such question," and I infer that the authority thus given has special reference to such sections as the 9th and 19th of the Regulation.

12. In my judgment, therefore, the decision of the first Court was right on the question of identification. I wish to add that in any event the Commission's decision cannot be entirely ignored: and that the learned Judge was wrong in saying that the plaintiff had nothing to rebut the defendant's evidence or that he had not attempted to rebut it.

13. As the suits were brought within twelve years from the date of resumption, no question of limitation arises.

14. The result, therefore, is that the appeals are allowed, the judgment and decrees of the lower Appellate Court set aside, and those of the first Court restored with costs in both Courts.

Mukerji, J.

15. I agree and wish to add a few words.

16. The dictum of the learned Judges in the case of Hira Lal Mukerjee v. Premamoyee Debi 2 C. L. J. 306 at p. 310, lays down that an order of the Commission made under the first paragraph of Section 61 of Act VI (13. C.) of 1870 is final and conclusive in reference Only to the appellate jurisdiction of the superior Revenue Courts under the first Clause of Section 29 of Regulation VII of 1822, and has no reference to the jurisdiction possessed by the Civil Courts under Clause (6) of that section. But the only provisions of that Regulation as also of the Regulations by which , it has been amended, which are made applicable to an enquiry by the Commission by Section 60 of the Act are those dealing with the powers of the Collector making a settlement of land revenue. Section 29 of the Regulation is not one of those provisions: it deals with appeals to the Board and the reservation of a right of suit. It had no reference or application to Act VI (B. O.) of 1870. There was, therefore, no necessity to make a provision investing an order of a Commission with finality and conclusive character, if it was to refer to the appellate jurisdiction dealt with in the first Clause of Section 29 of the Regulation. In my opinion the words "final and conclusive" must be taken in their ordinary and literal sense, which is the view taken in the other cases to which my learned brother has referred in his judgment.