
(1937) 04 CAL CK 0016
In the Calcutta High Court

Sm. Lilabati Dasi and Others

APPELLANT

Vs

Chitpore Golabari Co. Ltd. and Another

RESPONDENT

Date of Decision : 22-04-1937

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106, 50

Citation : AIR 1937 Cal 542

Hon'ble Judges : Jack, J

Bench : Division Bench

Judgement

Jack, J.—These appeals have arisen out of two suits u/s 106, Ben. Ten. Act, namely, Settlement Cases Nos. 10260 and 10261 of 1932 of the Court of the Assistant Settlement Officer, 24-Parganas, corresponding to Settlement Appeals Nos. 285 and 286 of 1933 of the Court of the Special Judge of the 24-Parganas and the two connected ejectment Suits Nos. 387 and 388 of 1931 of the Court of the Munsif of Alipore corresponding to Title Appeals Nos. 34 and 35 of the Court of the Additional District Judge of the 24-Parganas. The suits u/s 106 for correction of Settlement entries concerning the land in suit, and these suits were decreed and it was decided that the entry of Sthiban raiyat should be changed into Mourashi Mekarari raiyat in respect of these two holdings. The appeal against this correction was dismissed in both cases by the Special Judge. The landlords are the appellants in the two appeals arising out of these two suits. The other two suits were suits by the landlords for ejectment of the plaintiffs as trespassers inasmuch as the lands were not transferable and the tenancy had been sold to the defendants without the plaintiffs' knowledge or consent. These suits were also dismissed and the landlords have also appealed in these cases. The decision of the suits depended on the question whether there was any presumption u/s 50, Ben. Ten. Act, that the rents were fixed rents and the holdings were mekarari. The Courts below decided that the presumption did not arise u/s 50. In this Court it is contended in the first place that the presumption did arise because it was not shown that the rent had remained unchanged up to the date of the institution of the suit. The Courts below considered the question

of the rent remaining unchanged up to 1919, and the question discussed was whether the rent remained unchanged for 20 years before that date, but in fact the suit was not decided till 1932 and there is no evidence as to whether the rent had undergone any change between the years 1919 and 1932.

2. The second point raised is that the presumption was rebutted as the old collection papers show that the jama was not in existence at the time of the Permanent Settlement and that due weight was not given to this evidence by the Courts below. The third point raised was that u/s 111, Ben. Ten. Act, the suits u/s 113 should have been stayed. As regards the last point it is clear that Section 111 has no application because the issue which was to be decided both in the civil suit and Section 106 proceedings was whether the jamas were mokarari, that is to say, whether the rent was fixed, and this is not one of the four issues referred to in Sub-clause (1) of Section 111-B. It is true, however, that inasmuch as the suits u/s 106 were instituted subsequently to the ejectment suits and the issue to be decided in both sets of suits were the same, u/s 10, Civil P.C., the suits u/s 106 should have been stayed and the Assistant Settlement Officer's Court should not have proceeded to decide those suits. However, there was no application for stay u/s 10 and the Court paid no attention to Section 10, Civil P.C., and in fact tried the suits. The only object of staying those suits was to prevent multiplicity of suits and that object cannot be gained now by ordering a retrial of the suits.

3. As regards the first point, u/s 50 what is to be proved is that the rent or rather the rate of rent had not been changed during 20 years immediately before the institution of the suit. In this case the Courts have found that rents were not changed up to 1919. After that, the rents were not being paid because the landlords refused to recognize the plaintiffs as tenants and to accept rents from them. In these circumstances if the rents were not changed during the 20 years up to 1919, it cannot be said that they have changed during the 20 years preceding 1932, because there is no evidence that the rent had changed between the year 1919 and the year 1932. The landlords refused the rents not because they demanded rents at an enhanced rate but because they did not recognize the tenants. Had this point been raised in the Courts below, there would doubtless have been an express finding that the rent had remained unchanged during the 20 years immediately before the institution of the suits. As this point was not raised previously, I think the appellants cannot complain that the finding was not more precise on this point. The finding amounts to a finding that there having been no change up to 1919 and the landlords having refused to accept the rent from them up to 1932 merely because they refused to recognize the tenants, it can be inferred that the rent remained unchanged. The second point raised in this appeal is that the presumption is rebutted by the evidence that the tenancy originated after the permanent settlement. The evidence relied upon by the appellants to establish this is the absence of these jamas in the jamawashilbaki papers of 1929 to 1931: see Exts. G and G1. Secondly in the jamabundi papers of 1190 (Ex. H), they also do not appear. Thirdly, they are not

to be found in the "bakijay" papers of 1198 B.S. (Ex. 1). The omission of these entries, it is claimed, establishes the fact that the jamas came into existence after 1929-1931 and could not have been in existence at the time of the Permanent Settlement. The Courts below have held that the omission of these entries is not sufficient to show that the tenancies were not in existence previously. It is contended that the Courts have not given sufficient weight to this evidence. The Assistant Settlement Officer says that in the absence of any signature of the scribe or of any Government seal, there is no proof that they were prepared by Government Officials. For the appellants, reference is made to Regulation 1 of 1819, Section 5 and Regulation 12 of 1817. Regulation 1 says that it was the duty of the Collectors to appoint patwaris for the purpose of keeping such records, and Regulation 12 lays down the duty of Government putwaris to keep such accounts. It is therefore, maintained that these Regulations show that these accounts must have been those regularly maintained by Government Officials. The Assistant Settlement Officer says that from the nature of the documents it appears that they were prepared by the officers of the Zemindar or at least from the materials supplied by the Zemindars. He may not be correct in suggesting that they were not prepared by the Government Officials. Probably they were prepared by the patwaris under Regulation 1 and these were Government Officials. But as to the weight to be given to the omissions of the entries showing these jamas in the record, there had been a number of cases on the point and a certain amount of variety of opinion as to the weight to be given to the omission of the jamas in the Jamabandi Register. The Assistant Settlement Officer cites a number of cases in which it was held (e.g. in *Kasim Ali Prodhanya and Others Vs. K.S. Bonnerjee and Others*, that the absence of a tenancy in the old "jamawasil-baki" papers does not rebut the presumption of fixity of rent which arises from dakhilas showing a uniform rate of rent for over 20 years. He refers also to the case in *Chitpore Golabari Co. Ltd. Vs. Hari Mohan Ghose and Others*, in support of this view. But (as pointed out on behalf of the appellants) in that case the point was not decided. On behalf of the appellants reference has been made to two cases showing that the fact of absence of entry of the jamas in the books of account is evidence of their non-existence under Sections 9 and 11, Evidence Act. No doubt this is evidence from which it is possible to conclude that the jamas were not then in existence, but it is difficult to say that the learned Judges were bound to regard the absence of these entries as sufficient to rebut the presumption arising out of uniform payment of rent u/s 50, Ben. Ten. Act. In my opinion decision would depend upon the circumstances of each particular case. I think I should not be justified in holding in these cases that the Courts below are wrong in deciding that absence of entry of the jamas in the records was sufficient to show that at that time the tenancies were not in existence. We do not know if patwaris were appointed under Regulation 12 and if so, to what extent the record made by them was reliable. In deciding that these entries were not sufficient to rebut the presumption, I think the Courts below cannot be said to have committed any error of law such as would justify my interference in second appeal. It is

suggested that in Suit No. 10256, in which only a few tenants' rent receipts were produced, the Courts below were wrong in admitting in evidence the cess returns (Exs. 1 and 2) for the years 1898 and 1918 and the certified copy of the defendants' thokas (Ex. 28) for the year 1308 B.S. (=1901) to supplement the rent receipt produced. There can be no doubt that these cess returns were admissible in evidence u/s 95, Cess Act, as against the persons who filed them and the thokas also being accounts regularly kept, were admissible in evidence and therefore the Courts below were justified in taking them into account in coming to a finding that the presumption u/s 50, Bengal Tenancy Act, has been established. It is suggested that cess returns filed u/s 14 do not necessarily show the rent but in fact in the form given in the Schedule. One of the details referred to is the annual rent so that cess-returns must be taken to be a return of the rent paid. As regards the thokas it is suggested that the certified copies should not have been admitted in evidence and that there is no evidence that they were compared with the original as required by the Evidence Act. But the fact that they are certified copies indicates that they were compared with the original; and when the originals were withheld it must be taken that the certified copies were evidence equally with the originals.

4. These appeals are accordingly dismissed with costs. The hearing fee is assessed at one gold mohur in each of these four appeals.