
(1950) 07 CAL CK 0032
In the Calcutta High Court
Case No : A.F.A.D. No. 1553 of 1945

Sri Krishna Roy Jiew Deity and Others	APPELLANT
Vs	
Tinkari Adhicary and Others	RESPONDENT

Date of Decision : 11-07-1950

Acts Referred:

Bengal Land Revenue Assessment (Resumed Lands) Regulation, 1819 — Section 30
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 6

Citation : AIR 1951 Cal 198

Hon'ble Judges : Lahiri, J; Das Gupta, J

Bench : Division Bench

Advocate : Chandra Sekhar Sen, Amiya Kumar Mukherjee and Sudhir Kumar Acharjee, for the Appellant; Baidya Nath Banerjee and Prafulla Kumar Chatterjee (Jr.), for the Respondent

Final Decision : Dismissed

Judgement

Das Gupta, J.—The question that arises for decision in this case is whether the suit brought by the purchasers of a darputni for assessment of rent in respect of land recorded in the settlement operations as liable to rent but with respect to which the then landlord took no action for assessment and realisation of rent, after a decree in a suit u/s 30, Regulation II [2] of 1819, is barred by limitation. That suit was suit No. 369 of 1862 and the fact averred in the plaint which has been marked Ex. E was that the defendants were possessing certain lands on a false plea of niskhar. The prayer was that u/s 30, Regulation II [2] of 1819, this false plea of niskhar should be rejected and it should be found that these lands appertained to the mal assets of the plaintiffs. Nothing was said whether the lakheraj that was being wrongly claimed was alleged to have been granted since 1-12-1790, or prior to that date. The suit was decreed and the order was passed that these lands be resumed to as part of the mal assets.

2. It is admitted that thereafter no action was taken by the landlords for either amicable realisation of rent or for assessment of rent. It is not disputed that in

fact that there was since that date no realisation of rent. If the decree passed in the resumption suit created a relationship of landlord and tenant between the plaintiffs and the defendants in that case, the passing of time without payment of rent would not stand in the way of the landlord pressing his prayer for assessment even at the present day. If, however, a relationship of the landlord and tenant was not created by that decree the position would clearly be that at least within 12 years from the date of the decree the tenant would have perfected his right to continue to hold the land without any payment of rent. The law on the subject as laid down in *Bir Chunder v. Raj Mohun*, 16 Cal. 449 is in these terms :

"It has been held in certain cases by this Court that a decree for resumption of a lakheraj grant before December 1790 does not by itself create such a relation (relationship of landlord and tenant); that it is after the decree has been followed up by a proceeding assessing the revenue payable by the lakherajdar, and when the latter agrees to pay the revenue assessed, that such a relationship is created; while in the case of a grant subsequent to the year 1790, the decree declaring the zemindar's right to assess rent does establish such a relation."

It appears to us that the law has been correctly laid down in these observations and we have not seen any authority which has thrown doubt on the correctness of this proposition.

3. The question therefore, really is whether the lakheraj grant for the resumption of which the suit was brought and the decree which was passed in 1862 was one prior to 1-12-1790 or was one after that date. The plaint Ex. E throws no light on this question. There is this fact, however, to be remembered that it was held by the Full Bench in *Sonatun Ghose v. Abdool Furar*, 2 W. R. 91 that Section 30, Regulation II [2] of 1819, related only to resumption of lakheraj existing prior to 1790. The fact that the suit was brought u/s 30, Regulation II [2] of 1819, is therefore some reason for thinking that the plaintiffs were seeking to resume a lakheraj which claimed to exist from before 1790. It may be noticed in this connection that in *Bir Chunder v. Raj Mohun*, 16 Cal. 449, their Lordships decided from certain circumstances that the suit was one u/s 30 of Regulation II [2] of 1819, though it did not appear clearly from the face of the record and from that very fact concluded that the grant, sought to be resumed was one prior to 1790. I think that it might be possible for a plaintiff to show by proper evidence in a case that though the suit was brought u/s 30, Regulation II [2] of 1819, it was so brought under a misapprehension and that really it was for a resumption of a grant after 1790. In the present case, the plaintiffs have not given any such evidence. Mr. Sen arguing for the appellants has urged that his client might be given an opportunity to adduce such evidence. I see no reason why such an opportunity should be given when with full knowledge of the law he failed to produce any evidence on the point. The burden of showing that the suit was within the period of limitation was on them and in this they could not succeed unless they proved that there was relationship of landlord and tenant created by

the decree in that resumption suit. That again depended on the question whether the grant sought to be resumed was one prior to 1-12-1790 or after that. It was their duty to bring evidence to show that though the suit was brought u/s 30, Regulation II [2] of 1819 and so seemingly it was for resumption of a grant prior to 1790 it was not actually so. When they omitted to do so I do not, as I have already stated, see any reason why the matter should be remanded for giving them a further opportunity.

4. In my opinion the necessary conclusion from the record as it stands is that the resumption suit was with respect to a lakheraj which claimed to exist from before 1-12-1790. Consequently, the legal position is that the decree for resumption did not by itself create a relationship of landlord and tenant. The present suit for assessment of rent is, therefore, barred by limitation.

5. I may mention that Mr. Sen laid some stress on the fact that in the present case the record-of-rights is in his favour and shows that the land is liable to assessment for rent. It is easy to see that that record was based on the decree of the resumption suit that the lands appertained to the mal assets of the landlord. In any case it seems clear to me in view of our finding that no relationship of landlord and tenant was created by the decree, any suit for assessment of rent became barred long before the date of the settlement record. Consequently, the settlement record was incorrect. The presumption of correctness of the settlement record has in my opinion, been fully rebutted.

6. In my judgment the learned Court of appeal below has rightly dismissed the suit. The appeal is dismissed with costs.

Lahiri, J.

7. I agree.