

(1911) 05 CAL CK 0007

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2944 of 1908

Taran Chandra Ghose

APPELLANT

Vs

Ganendra Nath Roy and others

RESPONDENT

Date of Decision : 04-05-1911

Acts Referred:

Citation : (1911) 05 CAL CK 0007

Judgement

Carnduff, J.—In the case out of which this appeal arises, the Plaintiffs are some of the co-sharer landlords of Mouzah Begun Kola and the 1st Defendant is one of the tenants. The Plaintiffs' case is that the khas lands of the mouzah were partitioned and that the land in dispute is an accretion to the portion allotted to them, on which this Defendant has encroached and is a mere trespasser. In these circumstances the Plaintiffs seek to eject the first Defendant, or failing in that, to recover from him a fair rent for the land encroached upon. The defence is that the disputed land is a reformation on the site of the first Defendant's original holding, for which he has all along been paying a total annual rental of Rs. 82 to the whole body of landlords, that he has occupied it as part of that holding ever since its reformation 18 or 20 years ago, and that he is therefore not liable to pay any additional rent in respect of it, much less to be evicted therefrom. The Munsif found that the land in suit appertained to the first Defendant's original holding as alleged, and that in any event the claim was barred by limitation, because the Plaintiffs had never been in possession of it since its reappearance, whereas the Defendant had for more than 12 years held and openly asserted the right to hold it as a part of the six jamas for which he was paying a fixed rent. The suit was therefore dismissed in the Court of first instance.

2. On appeal, the learned Subordinate Judge reversed the Munsif's decision and gave the Plaintiffs a decree declaring their right to a fair and equitable rent and awarding them mesne profits in the shape of such rent, the rate of which he directed should be determined in execution proceedings. He has found that "there is no reliable evidence, or any evidence worth the name, to show that the

disputed land was the alluvion of diluviated lands" of the Defendant's original famas, and, as a consequence, apparently that it was an accretion to the Plaintiffs' lands. On the other hand, the Plaintiffs have, according to his judgment, failed to show that they were ever in khas possession of the lands to which the disputed land is said to have accreted, and they are, therefore, not entitled to eject the first Defendant ; and he has declined to go into the question of limitation, holding that it does not arise, "as the Defendants No. 1 held the land as a tenant."

3. It appears to me that the lower Appellate Court was in error in thus holding that no question of limitation could arise between a landlord and a tenant in a suit of this kind. If, as was found by the Munsif, the first Defendant more than 12 years before suit denied the landlords' right to any separate rent from him in respect of the disputed land, over and above that already paid by him for his six famas, and forcibly in assertion of his claim, appropriated the entire crop and thereafter continued in possession, he would, although a tenant, thereby clearly have a right to hold the alluviated plot as part of the original holding ; and the Plaintiffs' suit became barred by limitation. In this connection reference may be made to the cases of *Ishan Chandra Mitter v. Raja Ramranjan Chakraverty* 2 C. L. J. 125 (1905) and *Raktoo Singh v. Sudhran Akir* 8 C. L. J. 557 (1908). The first Defendant might, perhaps, be sued by all the landlords under sec. 52 of the Bengal Tenancy Act of 1885 for enhanced rent on the ground of excess land actually held by him : but that is another matter, and the evidence in the present suit was not directed to it.

4. The decree of the lower Appellate Court must therefore be set a side and the case reminded for a further finding on the question of limitation as stated above. The remand is also necessary for another reason, for I think that if the suit is not barred by limitation and a fair rent is to be allowed to the Plaintiffs, that rent must be determined by the Court in the suit and not in the execution proceedings. The costs of remand will be costs in the appeal. As regards the cross-appeal, it is admitted that it rests on the facts, and the learned Vakil has not pressed it. It, therefore, stands dismissed with costs.

Woodroffe, J.

I agree.