
(1915) 05 CAL CK 0003
In the Calcutta High Court

Tekait Ganesh Narain Sahi Deo

APPELLANT

Vs

Maharaja Protap Udai Nath Sahi Deo

RESPONDENT

Date of Decision : 17-05-1915

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 87
Civil Procedure Code, 1908 (CPC) — Section 11

Citation : 31 Ind. Cas. 691

Hon'ble Judges : Walmsley, J;Holmwood, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought by the plaintiff to have it declared that the entire Pargana Barwray is a hereditary impartible estate of the family of the plaintiff and that it is descendible generation after generation in the male line of the original holder and that the right of the second plaintiff to hereditary succession be declared.

2. It appears that Bar way is one of six parganas which, Cuthbertson in his report states, were incorporated with the Chota Nagpur Raj on the assumption of British rule. The Maharaja has the right to receive the Government revenue, but in other respects the so-called Raja for the time being is in the position of a talukdar subject to the custom of primogeniture and impartibility.

3. The question of resumability by the Maharaja on the failure of direct male heirs is not dealt with by Cuthbertson, but in the Revenue Settlement of 1908 the final publication of which as far as Pargana Barway is concerned took place on the 22nd April 1909, the plaintiff No. 1, who died after this case was decided in the lower Court, was entered in the Record of Rights as holding the Pargana as jagir properties descendible to children generation after generation, and the Maharaja of Chota Nagpur filed a suit u/s 87 of the Chota Nagpur Tenancy Act to have this record amended and altered to life-jagir, valuing his suit before the Revenue Officer at Rs. 10,000. The Revenue Officer dismissed his suit in August 1910, but on appeal to the Judicial Commissioner, acting under the special

powers conferred upon him by Section 261 (viii) of the Act, he decided that the tenure was not hereditary but resumable and that plaintiff's father had only obtained a life-grant from the Maharaja under a written kabuliyat and patta. This was because Lal Sahi Deo, father of the plaintiff No. 1 Raghubar Sahi, was a very distant collateral who could only succeed on the ordinary right of survivorship under Mitakshara Law, and the Judicial Commissioner held that the tenure was resumable by the Maharaja on failure of heirs male to the last Raja and that Lal Sahi had no title outside his life-grant. The matter was somewhat complicated by the intermediate holding of one Lachmi Nath, Sahi Deo, who succeeded his half-brother Harnath Sahi Deo and died without issue. This Lachmi Nath has in subsequent litigation been held to be illegitimate and the impartible Raj governed by primogeniture is said to have become resumable on the death of Harnath who also left no heir male of his body. The late Maharaja, who was later on declared insane, neglected his estates and in litigation with the Ranis, the widows of Harnath and Lachmi Nath Sahi, wanted to resume the tenure and joined the then holder Lal Sahi Deo, to whom he had given a life-interest, as plaintiff. He appears to have admitted the legitimacy of Lachmi Nath for the purposes of that case, as the widows of Harnath had consented to eat with Lachmi Nath. But whether Lachmi Nath was legitimate or not, the direct male line came to an end at his death, and the question before the Judicial Commissioner was whether Lal Sahi Deo had an hereditary right to the tenure or whether it was a resumable tenure held under a life-grant.

4. Mr. Kingsford decided this question against Raghubar Sahi Deo, the son of Lal Sahi. On this suit brought by the plaintiffs, Raghubar and his son Ganesh Narain, plaintiff No. 2, the Subordinate Judge has held that Section 258 is a bar and has dismissed the suit on that ground alone. He was asked also to hold that the decision of Mr. Kingsford operated as *res judicata* u/s 11, Civil Procedure Code, but he refrained from expressing any opinion on that point. In appeal before us, it is contended that Section 258 has no more effect than Section 109 of the Bengal Tenancy Act had, that a suit to recover or to get confirmation of possession of property valued at Rs. 52,000, cannot be barred by any decision of a Revenue Court which was not competent to try such a suit. Further, it is contended that Mr. Kingsford sitting in appeal was not a Revenue Officer and, therefore, Section 87 does not apply.

5. Thirdly, that plaintiff No. 2 being no party to the suit u/s 87, is not bound by it.

6. The answer to the first contention is that this is not a suit for recovery or confirmation of possession, but a suit for a simple declaration of the nature of the tenure, which is fully within the competence of the Revenue Court. Moreover, the suit as laid was incompetent, as plaintiff No. 2 had no right to any declaration in the life-time of his father and the suit was bad for misjoinder of causes of action. The plaintiff No. 2 has acquired his right to sue, if any, on the death of his father, but on the finding of the lower Court made in his father's lifetime, he has no such right.

7. The second contention is based on what we must characterise as the defective drafting of the Act.

8. Section 87 provides for a suit before a Revenue Officer and for an appeal in the prescribed manner to the prescribed officer from decisions passed under Sub-section (f), that is, decisions on any other matter not referred to in Clauses (a) to (e).

9. The Revenue Officer has power to transfer any particular case or class of cases to the Civil Court.

10. The rules made by Government provide that suits u/s 87 shall be tried in all respects as Civil suits between the parties.

11. Section 264 (viii) gives the Government power to prescribe the officer to hear appeals and the Judicial Commissioner is the prescribed officer under the rules. We are asked to hold that the Judicial Commissioner is not a Revenue Officer within the meaning of Section 258, which says that no suit shall be entertained in any Court to vary, modify or set aside either directly or indirectly any order or decree of any Deputy Commissioner or Revenue Officer in any suit or proceeding u/s 87. The definition of a Revenue Officer in Section 3(xxv) is any officer whom the Local Government may appoint to discharge any of the functions of a Revenue Officer under any provision of the Act. Now the Judicial Commissioner is specially appointed u/s 264(viii) to deal with the Revenue questions decided by the inferior Revenue Officers in appeal and, therefore, comes within the definition. It would be a great anomaly to hold that the decision of the Court of Appeal was open to be assailed in a suit when the first Court's decisions could not be so assailed, and the only alternative would be to treat the decision of the Judicial Commissioner as that of a competent Civil Court which would have the effect of raising a bar of res judicata u/s 11 Civil Procedure Code. We do not think that this could have been the intention of the Legislature. The provisions for appeal appear to have been overlooked in Section 258, and we must hold that the special Appellate Court in Revenue cases is, in deciding a dispute under this Act, performing the functions of a Revenue Officer. We may further observe that the jurisdiction of the Judicial Commissioner to decide the question that is now sought to be agitated in this suit, was decided by a Bench of this Court in *Raghubir Sahi v. Protap Uday Nath Sahi* Deo 13 Ind. Cas. 193 : 16 C.W.N. 294 : 15 C.L.J. 145 : 39 C. 241 the judgment in which appears on page 50 of the paper-book.

12. As regards the third contention, we think the Judge in the Court below is right. The plaintiff No. 2 had no co-parcenary right in the estate, which was fully represented by his father in the suit u/s 87. The plaintiff No. 2 being in possession can defend his title in the suit for resumption, which is now being brought by the Maharaja of Chota Nagpur. But he cannot by suit seek to vary or set aside the order of the Revenue Courts made u/s 87, No bar of res judicata has as yet been found against him u/s 11, Civil Procedure Code, but his present

suit is incompetent for more than one reason. We fix the hearing fee at Rs. 300.

13. The result is that this appeal is dismissed with costs and the Rule to stay further proceedings in the respondent's suit for resumption, is discharged with costs, two gold mohurs.