PRIVY COUNCIL

Nafar Chandra Pal Chowdhury

Vs.

Shukur Sheikh

P.C.A. No. 132 of 1916
(Lord Buckmaster, CJ, Sir John Edge, Mr. Ameer Ali and Sir Walter Phillimore, Bart. JJ)

4.6.1918

JUDGMENT

Lord Buckmaster C**J.**

1.In this case the respondents have not been represented before their Lordships, who have therefore been deprived of the advantage of hearing counsel in support of the judgment of the High Court of Bengal, which is the subject of this appeal, but having given careful consideration to all the circumstances they are unable to discover sound argument by which that judgment can be supported.

2. The real question which the appeal involves is whether or no the High Court were at liberty to reverse, upon the grounds assigned by them, a judgment and fourteen decrees of the District Judge of Nadia, dated the 28th March, 1907.

3. The case arises under the following circumstances:-

> The plaintiff, who is the present appellant is the *zamindar* of eight villages, and on the 25th, February, 1902, the Government of Bengal ordered a survey to be made covering these villages and a record of rights to be prepared under section 101 of the Bengal Tenancy Act of 1885. The survey was accordingly made and the record of rights was duly published but the appellant was dissatisfied with certain of the decisions of the Revenue Officer; and on the 9th March, 1904, instituted 290 suits for determination of the matters in dispute between himself and his tenants, and at the same time a number of applications were made both by the appellant and certain of the tenants for the settlement of rents in respect of the lands.

4. The lands to which the dispute related were of two classes - *jamai* lands, in which the tenant had permanent rights, and *utbandi* lands in which their rights were not permanent.

5. It was alleged that the record of rights had not properly apportioned the lands between these two headings, and this was one of the questions that arose for determination, while others related to the means by which excess lands held by the tenants were to be assessed under section 52 of the Act.

6. The main feature of the dispute, however, related to the standard to be used in measuring the lands. The agreed unit was a *rashi* or chain, the appellant claiming that its length should be 1,440 inches, while the tenants claimed that the length should be 1595 inches, the result of the tenants' contention being that the area they held was increased, the rent properly assessable and payable to the *zamindar* being accordingly diminished,

7. On the 4th December, 1905, the Revenue Officer delivered judgment in all the suits, which were tried together. He decided that as regards one village the proper standard of measurement was that claimed by the appellant, and was applicable to both classes of lands, while as regards the remaining villages the standard of the appellant was applicable to the *utbandi* lands only, and that the larger standard claimed by the tenants was applicable to the *jamai* lands. He also held that the appellant had failed to prove, except in one instance, that the lands entered as *jamai* were *utbandi*, and he directed that in settling the rents an allowance of 10 per cent should be made in favour of the tenants.

8. The appellant instituted an appeal in 109 of the said suits to the Court of the District Judge of Nadia; ten of the tenants also filed appeals to the same Court. Settlement took place with regard to many of the cases before the hearing, and only fifty-three of the appellant's appeals and eight of the tenants' were heard and decided by the District Judge. He delivered judgment on the 28th March, 1909, dismissing the tenants' appeals and deciding the plaintiff's substantially in his favour. The substance of his judgment was that upon the evidence the standard of measurement claimed by the appellant was the proper standard to be adopted both as to the *utbandi* and the *jamai* lands in seven of the villages that the lands entered in the record of rights as *jamai* and claimed by the appellant to be *utbandi* were in fact *utbandi* lands, and that the excess lands should be measured as claimed by the appellant, but he confirmed the provisions as to the allowance of a 10 per cent in favour of the tenants.

9. Appeals were brought to the High Court at Calcutta by the tenants in fourteen of the said cases and in twenty-two others by the appellant under section 109-A (3) of the Bengal Tenancy Act, which is in these terms:

> "Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter.
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> "Provided that if in second appeal the High Court alters the decision of the special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108."

10. By the operation of this section it is plain that the right of appeal is limited by the provisions regulating the right of appeal to the High Court from a Subordinate Court, and these are to be found in section 584 of the Code of Civil Procedure, the power as to the regulation of rents being dependent and consequent upon the alteration of the judgment upon the specified grounds, Section 584 of the Code is in the following words:-

> "Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court an appeal shall lie to the High Court on any of the following grounds, namely :-
>
> "(a) The decision being contrary to some specified law or usage having the force of law;
>
> "(b) The decision having failed to determine some material issue of law or usage having the force of law;
>
> "(c) A substantial error or defect in the procedure as prescribed by this Code or any other law which may possibly have produced error or defect in the decision of the case upon the merits."

11. The appellant's present contention is that the real dispute between the parties could not be brought within any one of those provisions. The High Court, however, entertained all the tenants' appeals, reversed the decrees of the District Judge, restored the decrees of the Revenue Officer, and dismissed the appeals of the present appellant, and the question that arises is whether their judgment depended upon the District

Judge having decided contrary to some specified law or usage having the force of law, or on having failed to determine some material issue of law or usage having the force of law. There was no suggestion that there had been any error or defect in the procedure.

12. Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is essentially a question of law, so also is the question of admissibility of evidence and the question of whether any evidence has been offered on one side or the other; but the question whether the fact has been proved, when evidence for and against has been properly admitted, is necessarily a pure question of fact.

13. Their Lordships have carefully considered the judgment of the High Court with these matters present to their minds, but they are unable to find that the decision of the District Judge stood in any shadowy borderland between fact and law. The question for determination was as to the character of certain lands, and as to what was the measurement properly applicable, and the real objection to the judgment of the District Judge was that there were underlying assumptions which vitiated his decision and that the form of his judgment showed that he had miss weighed the evidence.

14. An examination of the judgment of the High Court makes this plain. The District Judge appears to have expressed the opinion that it is unusual that different standards of measurement should prevail at the same time in the same village, one for *utbandi* and one for *jamai* lands, and the High Court seems to think that that assumption was one which, colored his whole judgment, a proceeding which, they say, was not justified in law. But it certainly is important to observe that both the parties were in agreement that, whatever the standard of measurement, it was the same for both classes of lands, and though it may well be as the High Court points out, that this in no way precluded the learned Judge from holding that the standard was different; yet when both parties agree that whatever the standard is it must be the same, it is difficult, in the absence of more specific material than is before their Lordships, to decide that there was something fundamentally wrong in the statement of the District Judge, who would know the local conditions, that a difference in measurement would be unusual. A further and a severe criticism is made by the High Court because the learned Judge stated that "Upon a consideration of the evidence I come to the conclusion that the standard which is one of 80 cubits prevails in the seven villages in dispute and after this statement proceeded to deal with the evidence.

15. Their Lordships are quite unable to follow the reasoning that is adverse to a judgment so framed, and yet it appears from the judgment of the High Court that they accepted the contention on behalf of the tenants appellants that by reason of this statement the learned Judge, in his subsequent careful and critical examination of the evidence, approached the question not with an open mind, but influenced by the fact that he had already arrived at a conclusion on certain assumptions. In the course of the judgment of the High Court this contention is set forth in the following terms:-

> "It has been contended on behalf of the tenants that, in dealing with the evidence in the way in which the special Judge has dealt with it, he has not given full effect to the evidence adduced on behalf of the tenants, that he has erred in the estimate which he has formed of its value, being misled by the conclusion at which he arrived on the assumption made at the commencement of his judgment, and that his conclusions are not sufficient to rebut the presumption that the entries in the record of rights are correct, or to displace the findings on the evidence which had been arrived at by the Revenue Officer. We admit that in the present cases the findings on some of the points, which are findings of fact arrived at by the lower appellate Court, are findings which we should hesitate to displace, but in dealing with this matter we have to consider whether, in arriving at those findings, the lower appellate Court has really approached the consideration of the evidence in an impartial spirit, or has been prejudiced by the conclusions arrived at from assumptions based on pure hypothesis. In our opinion the evidence adduced on behalf of the tenants, supported as it is to some extent by the evidence of some of the witnesses for the landlord, and supported also by the result of the enquiries made on the spot, is sufficient to support the conclusion at which the Revenue Officer has arrived on a careful consideration of the whole of the evidence."

16. This seems to be the keynote of the judgment, and apart from the suggestion of prejudice and unreasonable assumptions, for which their Lordships can find no justification, it really amounts to no more than a finding that upon the documents and evidence placed before the learned District Judge the High Court would have come to a different conclusion, but it is precisely this revision of evidence which is excluded by the limited character of the appeal.

17. It may well be that before different tribunals the witnesses summoned and the documents used would have created an opinion upon the merits of the controversy different from that which was formed by the District Judge. But upon this the High

Court was not competent to enter; their functions were completely circumscribed by the provisions of the statute passed for the express purpose of securing some measure of finality in cases where the balance of evidence, verbal and documentary, arose for decision.

18. In their Lordships' opinion, therefore, the High Court have exceeded their jurisdiction, and this appeal must succeed.

19. When special leave was granted to the appellant by Order in Council, dated 12th August, 1913, to bring this appeal conditions were imposed that the appellant should, in any circumstances pay the respondents' costs. The respondents have not appeared, and this obligation therefore does not arise but it follows that there will be no costs of this appeal and their Lordships see no reason for interference with the order as to costs made by the High Court from which this appeal is brought. The dismissal of the appellant's appeals to the High Court has not been challenged.

20. Subject to this, the decrees of the High Court ought to be set aside and those of the District Judge restored, and their Lordships will humbly so advise His Majesty.

Appeal allowed.