PRIVY COUNCIL

Midnapur Zamindari Co. Ltd

Vs.

Naresh Narayan Roy
(Lords Dunedin, CJ, Moulton and Mr. Ameer Ali. JJ.)

7.12.1920

JUDGMENT

Lord Dunedin CJ.

1. This is an appeal from the judgment of the High Court at Calcutta, affirming a judgment of the Subordinate Judge, by which he decreed Khas possession of certain reformed and accreted chur lands in favour of the plaintiff. The plaintiff is a Zamindar, and the lands in question are admittedly within his Zamindari. The existent lease of the lands having, as he contended, expired, he gave the necessary notice to terminate the tenancy. The appellants plead that they are occupancy tenants and as such entitled to maintain possession under the terms of Act X of 1859 (the Bengal Rent Act).

2. The appellants are the successors by transfer to the firm of Jardine, Skinner and Co., who were prior to 1864, in occupancy of the lands, the Zemindar at that time being the respondent's father, to whom he has succeeded. In that year the respondent's father raised an action against Jardine, Skinner and Co., claiming the lands in question. That suit was compromised. At the same time Jardine, Skinner and Co., took a lease of the whole taluk within which the lands were situated, Patta and kabuliyat were executed.

3. The kabuliyat executed by the Manager of Jardine, Skinner and Co., bears as follows:-

> " I having applied for a temporary ijara settlement of all the makals, etc., appertaining to your Zamindari and putni taluq.....you grant me an ijara settlement and ijara patta for a term of eight years from 1271 to 1278 B.S. fixing Rs. 7,500 as the annual rent, exclusive of collection charges."

4. The kabuliyat then proceeds to incorporate the settlement as follows :

> " You have instituted against me a suit, No. 19 of 1864, in the Sudder Amin

> Adalat of the District of Murshidabad, claiming a 4 annas 13 gandahs 1 kara 1 karant share of the reformed and accreted chur lands of Bajupur, Krishnapur, Dinurpara alias Muniek Chusk, appertaining to taraf Bhangsibadanpur, and a 7 annas share of the reformed and accreted chur land of ashariadaha appertaining to Pargunnah Kazirhatta. Creating a jote of the same and fixing Rs. 1,300 as its yearly rent, you include the same also in the aforesaid ijara rent. In respect of the same, the stipulation is that after the expiry of the term of this ifara, patta and kabuliyat will be given and taken, settling the rent of the aforesaid chur land in your nij share, at a fair rate, according to the proper rate prevailing in the villages, either amicably or by suit, that until you settle the rent in the aforesaid method, according to the proper rate prevailing in the villages. I will pay up to that time the aforesaid yearly rent of Rs. 1,300 in twelve monthly instalments as per Kistbandi, and in default of any Kist, I will pay interest at Re. 1 per cent, per month, and that if after the fair rent is settled according to the proper rate prevailing in the villages I refuse to pay that rent, then you will bring the lands under khas possession by evicting me therefrom; and I shall not be able to raise any objection to the same."

5. The case accordingly depends upon the proper interpretation of this clause in the ijara. The learned Judges of the appellate Court have held that the clause is practically indistinguishable from the clause which was the subject of decision by this Board in the case of *Jardine, Skinner and Co. v. Sarat Soondavi Debi* [1] There, as here, there was a lease of other lands besides the lands in question, and the words of the ktabuliyat are as follows :

> " Having fixed a yearly rent of Rs. 609.4 as, for your nij share of 20,950 bighas describing them as per boundaries given in the schedule below, you have included it in the aforesaid ijara, rent of Rs. 4,417-9 as, 5 pies. I shall be in possession of the said chur as a jote. Upon the expiration of the term of the ijara of the said mahals, a patta and kabukliyat will be respectively given and taken in respect of the jote, regard being had to the quantity of the land and amount of rent that shall be determined to belong to your nij share in accordance with the productive power of the land within the area determined by a measurement of the said chur. If I do not take a patta and give a kabuliyat within two months after the fixing of the rate of that land, you will make settlement with others."

6. In that case, as here, Messrs. Jardine, Skinner and Co., claimed to be occupancy tenants, but the High Court and this Board negatived that contention, and held that the agreement merely amounted to a right of renewal, and did not create either an

occupancy right or vest in the defendants a new term of years.

7. Now if the clause in that case be compared with the clause in this, it will be seen that it is for all practical purposes identical. The clause employs the term "jote" and speaks of a "nij" share. "Jote" is a general term and it is not necessarily equivalent to " raiyati jote". In the present case it is shown in another place that the term "raiyati jote" is used when an undoubted right of occupancy is being dealt with.

8. The only distinction that can be drawn between the clause in that case and in this is that a special covenant is inserted in this case fixing the old rent of Rs. 1,300 as the rent to be paid on holding over till such time as a new rent is fixed while in the other case there is silence, as to this. But this covenant is nothing more than an expression of what the law would hold without it and cannot in their Lordships opinion, alter the general construction of the document.

9. The Appellant's Counsel further urged that the present case was not ruled by the other because he said that in this case there was an antecedent occupancy right whereas there was no such in the other case, and that in the light of that fact the agreement must receive a different interpretation. To make good such an argument the onus is obviously on the appellants to prove such an antecedent right.

10. In their Lordships' view they fail to do so, for several reasons. In the first place, they bring no clear proof on the subject.

11. But, further, there is a very significant 'proceeding in a litigation which arose between the parties in 1877. That was after the expiry of eight years from 1864 and the respondent's father sued for khas possession. The defendants, Jardine, Skinner and Co., pleaded (i) an occupancy right and (ii) that the suit was premature, no attempt having been made to settle the terms of a new lease under the right to get a renewal for one more term. The Subordinate Judge held that there was no occupancy right but that the suit was premature.

12. Appeal was taken to the High Court and they in affirming the judgment, said as follows, after expressing the view that the action was premature:

> " If the respondents (defendants) had been satisfied with this judgment we should have been inclined to dismiss the appeal with costs, but not withstanding the suggestion of the Court the Government Pleader, who appears for the tenants thought it advisable to lay before us a cross-appeal. That cross-appeal is against the finding of the lower Court that the defendants had not a right of

> occupancy in this land. It was contended that they had such right of occupancy because the land leased to them is called a jote and because from the date of the lease granting them that jote down to the present time they have occupied it for twelve years and upwards, and consequently must be regarded as having been given a right of occupancy. It seems to us that if there is anything clear in regard to a right of occupancy as defined by Act X of 1859, it is a right accruing to a raiyat and not to persons who are middlemen. It would be, we think, a monstrous straining of the law to apply the term 'right of occupancy' to such an estate as this.

Their Lordships do not consider that this will be found an actual plea of res judicata, for the defendants, having succeeded on the other plea, had no occasion to go further as to the finding against them : but it is the finding of a Court which was dealing with facts nearer to their ken than the facts are to the Board now, and it certainly creates a paramount duty on the appellants to displace the finding, a duty which they have not been able to perform.

Lastly there is the internal evidence from the ijara itself, where the jote is said to be created - an expression little suited to the recognition of a pre-existing right.

On the whole matter their Lordships agree in all points with the judgment of the learned Judges of the appellate Court and they will humbly advise His Majesty to dismiss the appeal with costs.

Appeal dismissed.

Cases Referred.

1 (1877), 5 IA 164 : 3 CLR 140 : 3 Sar 847 (PC).