CALCUTTA HIGH COURT

Gokhul Sahu

Vs

Jodu Nundun Roy

(Pigot and Beverley, JJ.)

02.04.1890

JUDGMENT

Pigot and Beverley, JJ.

1. These appeals raise a very important question under the Bengal Tenancy Act, and it is to be regretted that the facts out of which they arise are not more fully before us.

2. It would appear, however, that under the provisions of chapter X of the Bengal Tenancy Act a measurement was made and a record of rights prepared in respect of a certain local area within which the land in suit is situated. The terms of the order made under Section 101 of the Act and the particulars specified therein in accordance with Section 102 are not on the record; but it is admitted that one party (whom we shall call the Boys) claimed this land as rent-paying land appertaining to their estate, while the other party (whom we may call the Sahus) claimed it as their rent-free brohmutter land. This dispute having been enquired into by the Revenue Officer under Sections 106 and 107 of the Act, he decided that the land was mat land and liable to pay rent.

3. Against this decision the Sahus appealed under Section 108 to the Special Judge appointed under that section-the Special Judge, it may be mentioned being the District Judge of Tirhoot, and he reversed the decision of the Revenue Officer and held that the land was rent-free.

4. From that decision there was no second appeal.

5. Both parties, however, filed suits in the Civil Court. The Sahus sued the Roys for damages for having cut and carried the crops of the land, while the Roys sued the Sahus to set aside the Judge's decree and for a declaration that the land was mal and not the brohmutter of the Sahus. The two suits were tried together by the Munsif, who gave the Roys a decree and dismissed the suit of the Sahus. On appeal this decision was affirmed by the Subordinate Judge.

6. One point which was takan and argued in both the lower Courts was that the decision of the Special Judge under Section 108 of the Act operated as res judicata between the parties, and that no suit would lie to set it aside; and this is the point that has been pressed upon us in second appeal No. 738.

7. The question is one of very great difficulty, having regard to the provisions of the Bengal Tenancy Act on the subject. That Act nowhere defines with sufficient clearness the extent, scope, and object of the so-called record of rights. Section 102 in truth specifies certain particulars which may "either without, or in addition to other particulars," be recorded. The particulars there specified are such as presuppose the existence of a tenancy-such as the name and class of the tenant, the land held by him, the rent payable therefor and the nature of that rent, and the special conditions and incidents (if any) of the tenancy. If no relationship of landlord and tenant existed in respect of any particular piece of land, it seems to us to be at least doubtful whether any entry could be recorded regarding it unless the order made under Section 101 specially directed such entry to be made as one of the "other particulars" not specified in Section 102.

8. In the present case we think we must take it upon the finding of the lower Courts that the Sahus are "tenant's" within the meaning of the Act, and that the Revenue Officer was justified in making an entry regarding the land in suit.

9. By Section 3, Clause (3), a "tenant" is defined to mean "a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person." Now the brohmutter sanad of Kartick 1199 F. S., under which the Sahus claim to hold, is found by the Munsif to have been granted by the predecessors of the Roys, and if genuine it operates as a special contract, but for which the Sahus would be liable to pay rent to the Roys. That being so, the Sahus, we think, are according to their own case tenants within the meaning of the Act, and the Revenue Officer therefore had jurisdiction to enter the particulars of the land in suit in his record of rights.

10. The next point is whether the Revenue Officer having heard and decided the dispute under Section 106, his decision will operate as res judicata in a subsequent suit brought to try the same question in a Civil Court between the same parties.

11. In the case of Hurri Sunket Mookerjee v. Muklaram Patro 15 B.L.R. 238 it was held by a Full Bench of this Court that a judgment by a Collector in a suit under Act X of 1859 declaring the plaintiff entitled to assess rent upon land alleged by the defendant to be lakheraj is not conclusive in a subsequent suit between the same parties for arrears of rent under Bengal Act VIII of 1869. That decision was based on the principle that the decision of a Revenue Court on a question of title is no bar to the trial of the same question by the ordinary Civil Courts.

12. But by Section 107 of the Bengal Tenancy Act the Revenue Officer is directed to adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and it is provided that his decision in every such proceeding shall have the force of a decree. It appears to us that these words were intended to invest him for the trial of these disputes with the powers of a Civil Court, and to give to his decision the binding force of a decree of a Civil Court. This view is borne out, as it seems to us, by the two following sections. Section 108 gives the right of appeal against such decision to a Special Judge to be appointed under that section, and of second appeal to the High Court. Section 109 distinguishes between disputed and undisputed entries in the record, and while laying down that undisputed entries shall be presumed to be correct until the contrary is proved, appears to treat the decision of disputed entries under Sections 106-108 as final.

13. We must confess that it is with considerable hesitation that we arrive at this result. The language of the Act is unfortunately vague; but we cannot suppose that it was the intention of the Legislature after providing for the trial of disputes regarding entries in the record of rights by the Code of Civil Procedure and by a Special Appellate Court, that such disputes should be liable to be re-opened before the ordinary Civil Courts of the country.

14. We are of opinion, therefore, that the suit of the Roys was barred by Section 13 of the Code of Civil Procedure.

15. Appeal No. 738 must be allowed, the decrees of the lower Courts are reversed and the suit dismissed with costs in all Courts.

16. In Appeal No. 691 we think that no ground for second appeal exists, and we accordingly dismiss it with costs.