

CALCUTTA HIGH COURT

Rungo Lall Lohea

Vs

Wilson

(O'Kinealy, J.)

13.07.1898

JUDGMENT

O'Kinealy, J.

1. In this case the plaintiffs claim to have been the owners of the premises No. 7, Haripore Lane, in Sulkea, in the suburbs of Howrah. They alleged that the defendants Messrs. Anderson, Wright & Co. had been tenants under them in occupation of those premises at a monthly rent of Rs. 60-10-9 down to the end of the month of December 1889; that the plaintiff's by a notice to quit, dated the 4th of December 1889, determined the tenancy then existing between them and the defendants at the end of that month; but that the defendants nevertheless continued in the occupation of the premises down to the time of the institution of this suit, that is to say, the 31st of July 1894. The plaintiffs claimed Rs. 150 per month for use and occupation of the premises from the end of December 1889 to the filing of the plaint.

2. The plaintiff Rungo Lall Lohea is one of four brothers, the others being Nahrmull, Sew Bux and Bhaniram, who constituted a joint Hindu family, and it appears that they carried on business in Calcutta under the style of Nahrmull Bhaniram, and while carrying on business under that name they purchased the premises No. 7, Haripore Lane. The other plaintiffs are the representatives of the three brothers of Rungo Lall Lohea.

3. The plaintiffs state that the defendants had paid the rent of the premises for the period ending with the month of November 1889 only, and they claim to recover the rent for the month of December 1889 at the rate of Rs. 60-10-9 per month and the rent for the subsequent months down to the end of June 1894 at the rate of Rs. 150 a month, which rent was claimed by them as a fair and reasonable rent for the defendants' use and occupation of the premises during that period.

4. It is apparent from the above statement that a portion of the plaintiffs' claim would under ordinary circumstances be barred by the law of limitation, as the suit was not instituted till the

31st of July 1894. The plaintiffs, to obviate this difficulty, relied upon a letter written by the defendants to the plaintiffs' attorney on the 5th of November 1891, to the terms of which I shall hereafter refer.

5. With regard to the claim put forward by the defendants the plaintiff's say in the fifth paragraph of the plaint, that the defendants objected to the notice claiming,--to use the words of the plaint,--"that the rent payable in respect of the said lands could not be enhanced by reason of some rights which they," the defendants, said they possessed under an alleged deed which they stated to be a perpetual pottah, but though endeavours have been made by and on behalf of the plaintiffs to ascertain from the defendants the nature of the said rights claimed, and to obtain an inspection of the said document, the defendants have persistently refused to give any such information or any such inspection.

6. The defendants in their written statement took a variety of objections: firstly, they said this Court had no jurisdiction to try this suit; secondly, they did not admit the title upon which the plaintiffs relied to maintain this suit; thirdly, they claim to hold the premises under a mourasi potta or permanent lease granted in the year 1847 to their predecessor in title, and they allege in the fifth paragraph of their written statement that they had paid the rent under this pottah down to the end of November 1889, but that from the month of September 1881 they had paid the rent "to a person as they believe named Nahrmull Bhaniram, but they state that they did so without admitting the title of the said Nahrmull Bhaniram to the said premises and only upon an indemnity granted to them by one Sew Bux, a broker in their employ, inasmuch as the said Nahrmull Bhaniram was unable or unwilling to satisfy them that he had a complete or valid title to the said premises."

7. In the 6th paragraph of their written statement the defendants say "that they had no personal knowledge as to whether the said Nahrmull Bhaniram was in fact a person as they believe or a firm as alleged in the 2nd paragraph of the plaint, but in any case they do not admit that if a firm it was composed of the members therein mentioned, or that the persons on whose behalf the plaintiffs purport to sue are the legal representatives of the members of the said firm," that is to say, the defendants in this paragraph again raise the question of the plaintiffs' title to maintain the suit which they had previously done in the 3rd paragraph of their written statement.

8. The defendants admitted the receipt of the notice to quit relied upon by the plaintiffs, but they did not admit that it emanated from the plaintiffs. They say they have always been ready and willing to pay rent at the rate of Rs. 60-10-9 per month, but they do not say to whom; they allege that this rent, though tendered, was refused, they do not say by whom; and they also say in the 9th paragraph of the written statement that "they are willing to pay the said rent at the rate of Rs. 728-2-10 per annum (subject to the law of limitation) if this Hon'ble Court should hold that the

plaintiffs are entitled thereto;" that is to say, the defendants avow themselves willing to satisfy the decree of this Court in case they are not successful in preventing the plaintiffs from obtaining a decree against them.

9. In the 10th paragraph of their written statement the defendants say this: "The defendants deny that they have refused to disclose to the plaintiffs the nature of the rights claimed by the defendants under the pottah above mentioned or that they have declined to allow inspection of the said pottah as alleged." It will be seen from the evidence, which I shall deal with hereafter, that the defendants made no attempt to support this paragraph of their written statement. Indeed, that evidence shows that the statements in this paragraph are not correct.

10. This written statement was filed on the 13th of June 1896, nearly two years after the filing of the plaint, and the suit remained as then constituted, until the 24th of January 1898, when by an order of this Court Rajah Sew Bux Bogla was added as a defendant, he alleging himself to be the purchaser of the premises in question from the plaintiffs at a sale held by the Registrar of this Court on the 7th of August 1897.

11. Hitherto in stating the questions, which have arisen between the parties, I have treated the case as if Messrs. Anderson, Wright & Co. were the sole defendants, and I shall continue to do so until I come to deal specifically with the claim put forward by Rajah Sew Bux Bogla. It is convenient in this case that I should in the first instance determine the questions which arise between the plaintiffs and the original defendants in the suit.

12. When the case came on for hearing I gave the plaintiff's leave to amend the prayer of the plaint by claiming in the alternative a decree for the rent from the beginning of the year 1880 to the end of June 1894 at the rate of Rs. 60-10-9 per month. In this position of matters the questions, which arise between the plaintiffs and the defendants, [leaving aside for the moment the question of jurisdiction which I shall deal with in considering the case of Rajah Sew Bux Bogla] are these:

1st.--Did the relation of landlord and tenant exist between the plaintiffs and the defendants?

2nd.--If so, what was the nature of the tenants' interest in the land. That is to say, was it a monthly tenancy as contended for by the plaintiffs, or a perpetual lease as contended for by the defendants?

3rd.--If the tenancy were a monthly tenancy was that tenancy put an end to by the notice to quit, dated the 4th of December 1889?

4th.--Is the plaintiffs' claim under the plaint, as amended, or any portion thereof, barred by the

law of limitation?

13. Upon the first question Byjnath Lohea, one of the plaintiffs, was called. He is the adopted son of Nahrmull, and from his evidence it appears that Nahrmull and his three brothers Rungo Lall, Bhaniram, and Sew Bux formed a joint Mitakshara family. They carried on business in Calcutta under the name of Nahrmull Bhaniram.

14. [His Lordship proceeded to discuss the evidence bearing on the first issue, and stated his reasons for coming to the conclusion on the facts that the relation of landlord and tenant did exist between the parties in 1889. He then went on to say:]

15. I am of opinion therefore that the plaintiffs have shown that the relation of landlord and tenant did exist between them and the plaintiffs in 1889, or at least they have shown sufficient to entitle them to call upon the defendants to prove that such a relation did not exist between them, and this the defendants have not done.

16. The next question which I have to consider is what was the nature of the tenancy between the plaintiffs and the defendants, and upon this question I have come to the conclusion that it was a permanent tenure not subject to be determined by the notice of the 4th of December 1889, assuming that to be a valid notice in other respects.

17. The defendants have produced a document, dated 27th of Assin 1254, corresponding with the 12th of October 1847. This purports to be a pottah of ten bighas of land in Sulkea granted by Mussamut Newaz Bibee to James Cockrell, Thomas Gladstone, Alexander Robert, and Pitamber Banerjee. The defendants show by a series of title deeds that the premises covered by the pottah were mortgaged and conveyed from time to time by the lessees for the time being, and these deeds show that about the year 1861 those premises were, known by the name of the Albion Docks and conveyed as such. The defendants also show that the premises covered by the pottah were conveyed to the West's Patent Press Company by a conveyance of the 22nd of July 1876. The defendants were the managers of that Company, and Mr. Anderson proves that under that conveyance he got possession of the premises in question in this suit, and he also swears that these same premises were known in former days as the Albion Docks. There is, therefore, no doubt whatever that the lands covered by the pottah are the lands in question in this suit, and the next question I have to determine is, what interest does the pottah purport to convey from the lessor to the lessees. The pottah is expressed to be granted for the purpose of the lessees constructing "a brick-built dock, buildings, &c., and workshops," and after stating the boundaries of the land goes on to say: "You shall, without excuse, pay the rent hereof into my sarkar year by year at the rate of Rs. 90 (ninety rupees) per bigha per annum (amounting to) the sum of company's 900 (nine hundred rupees) for 10 bighas by instalments according to the details of

instalments. If there be default in (payment of) hist, you shall pay interest according to law. Further if there be (any) alluvial accretion of land over and above the land aforesaid in future, you will duly make (arrangement) with regard to the same separately. To this effect, I grant this lease in writing after taking (a) kabuliat." The details of instalments show that the rent was payable yearly in six instalments of Rs. 150 each.

18. The conveyances and mortgages, which were put in evidence by the plaintiffs, show that the dock and other permanent buildings were erected on the land, and that the land was dealt with by the original lessees and their successors as if their interest therein were a permanent one. Mr. Anderson states the value of the pucca buildings on the land when he took possession of the premises in 1873 to be about a lakh of rupees. There is no direct evidence of the cost of building the dock, but there is no doubt it must have been very large. In the year 1870 there was a suit for rent instituted by the heirs of Newaz Bibee against the then holders of the pottah, and the occupiers of the premises. In this suit the original kabuliat was filed by the plaintiffs, and from the record it appears that after the pottah had been granted a decree was obtained, apparently by the owner of some land adjacent to the premises covered by the pottah for possession of a portion of those premises, and in consequence of that decree and by an arrangement between the lessor and the lessees the yearly rent of Rs. 900 payable under the pottah was reduced to Rs. 728-10-9, and this reduced rent continued to be paid to Newaz Bibee and after her death to her son-in-law and her grandsons Sadut Ally and Futteh Hossain, and subsequently to these grandsons alone down to the year 1880 by the lessees for the time being. During the whole of this time there is no trace of any conduct or any assertion on the part of the lessors for the time being inconsistent with the fact of the pottah being a permanent one, which the lessees show from their dealings with it they considered it to be. In fact, the arrangement come to between the lessors and the lessees in 1861 for the reduction of the rent owing to the loss of a portion of the land would rather show that the lessors at that time did not consider they could eject the lessees by means of a notice to quit. If such an idea had entered their minds, it is extremely unlikely that they would agree to any reduction. We have therefore a lease of this land for the purpose of erecting structures of a permanent and costly character thereon. This of itself would, according to the decisions of this Court, be sufficient to stamp this lease as a permanent lease. But we have more than that here: we have a uniform payment of rent based on the pottah for a period of over forty-two years, and transfers of the lessees' interest to various persons within that period, while no conduct or assertion of the lessors during that period can be pointed to as indicating that they looked upon the lease as not a permanent one. I do not think the form of the receipts can be taken as such an indication. It is true that in the receipts of 1874, 1875, 1876, the names of the original tenants appear, and there is nothing to indicate that the tenancy is permanent, but there is a distinct admission in each of them of the transfer by purchase to West's Patent Press Co., or to

the defendants Anderson, Wright and Co. The receipts given by Nahrnull Bhaniram seem to me to carry the matter no further. I have no doubt, therefore, that the tenancy from its inception was and was intended to be a permanent one, and that the plaintiffs could not determine it by a notice to quit.

19. I am also of opinion that even if the tenancy were only a monthly tenancy, the notice given by the letter of the 4th of December 1889 was not sufficient to determine such a tenancy. The result, therefore, is that the plaintiffs are not entitled to a decree for anything except the rent from the month of November 1889 down to the filing of the plaint at the rate of Rs. 60-10-9 per month, and I think they are entitled to that, as the defendant's letter of the 5th of November 1891 is sufficient to prevent any portion of this claim being barred by the law of limitation.

20. The next question is as to the costs of this suit. The defendants did not admit the plaintiffs' title to the rent from November 1889. They did not agree to pay the rent to the plaintiffs unless the latter would admit their pottah to be a mourasi mokurari pottah at a time when the plaintiffs had not had inspection of that pottah. It is true that the plaintiffs made no claim for the rent from the beginning of the year 1890 at the rate of Rs. 60-10-9 until this case came on for hearing, but this part of the claim stands in the same position as the claim for the rent of December 1889, to which the defendants, in their written statement, do not admit the plaintiff's are entitled. That written statement is not a very candid document, and I do not think the defendants were justified in taking up the position which they did. I shall therefore give the plaintiffs a decree for the costs of this suit up to and including the first day's hearing from the defendants Messrs. Anderson, Wright & Company. I make no order as regards the costs of the remaining days of the hearing, except the costs of the last day, which I shall deal with hereafter.

21. I have now to consider the case with reference to the claim of Rajah Sew Bux Bogla. He claims to be the owner of the premises, and he makes out his title in this way.

22. He has produced a certificate of sale, dated the 17th of March 1893, which shows that Rungo Lall Lohea on the 17th of April 1887, purchased at a sale in execution of a decree obtained by him against Sadut Ally and Futteh. Hossain (passed in Original Suit No. 59 of 1880 in the Court of the Subordinate Judge of Hooghly) for a sum of Rs. 850, a 2 annas share in five parcels of land, one of which is stated to be the premises in question.

23. He has also produced a certificate of sale, dated the 10th of June 1880, which shows that Jogeeram Agurwalla purchased at a sale in execution of a decree obtained by Annoda Prosad Chowdhry and others against Sadut Ally and Futteh Hossain (passed in Original Suit No. 59 of 1880 in the Court of the Subordinate Judge of Hooghly) for a sum of Rs. 31,800, a 14 annas share in three parcels of land, one of which is alleged to be the premises in question. This 14

annas share was afterwards purchased by Nahrmull Bhaniram in 1881.

24. It is in this way, according to Rajah Sew Bux Bogla, that the premises in question came into the possession of the plaintiff family.

25. He has also produced a certificate of sale, dated the 20th September 1897, which shows that Rajah Sew Bux Bogla purchased at a sale held by the Registrar of this Court under a decree obtained by Pokur Mull and others against the plaintiffs (passed in Suit No. 414 of 1894) for a sum of Rs. 24,000 two parcels of land one of which is alleged to be the premises in question.

26. He thus claims to be the owner of these premises, and he was made a party defendant in this suit at his own instance in order to see that his interest should not be prejudiced by any collusive proceeding on the part of the original parties to the suit.

27. He contended, as did the original defendants, that this was a suit for land, and that I had no jurisdiction to entertain it on that ground. But it seems to me that where, in a suit by a landlord against his tenant for rent at a rate agreed upon for one period and for rent on the basis of use and occupation for a subsequent period, it becomes necessary to determine what the nature of the tenancy was, I think that fact does not make the suit a suit for land. There is no relief claimed in respect of the land, nor is it sought to deal with it in any way whatever, and I think the contention of the defendants involves what appears to me to be an undue extension of the phrase "a suit for land" as used in Clause 12 of the Letters Patent, see *Juggernaut Doss v. Brijnath Doss*¹ and *Land Mortgage Bank v. Sudurudeen Ahmed*²

28. It was also contended on behalf of Rajah Sew Bux Bogla that the lease was granted for the purpose of building a dock only, and that the evidence shows that the defendants filled up the greater portion of the dock and have been using the unfilled portion merely as a water tank. Under these circumstances he urged that the lease had determined, and he cited in support of this contention the case of the Secretary of *State for India v. Luchmeswar Singh*³ In that case the Maharajah of Durbhanga brought a suit against the Government to recover possession of lands which had been in their possession from the year 1798. The defendants were admittedly tenants of the plaintiff, and it therefore lay upon them to show that their tenancy was still existing at the institution of the suit, or in other words that it was a permanent tenancy. There was no written lease, nor any evidence as to what were the terms which were agreed upon at the beginning of the tenancy, and all that the Government could rely upon to support their claim to a permanent tenancy was the fact that the rent was uniform throughout the whole period of their possession. The Privy Council held that fact was of no weight under the circumstances of that case and dismissed the appeal. In the course of their judgment their Lordships say this: "But even if the onus probandi did not lie so clearly on the defendants, their Lordships think that the reasonable

explanation has been given by the Courts below, and that there probably was some understanding, which might have amounted to an agreement, that the Government should have this land for the purposes of a stud, not that they should have it for ordinary agricultural or commercial purposes, to make what money they could of it. Thus the moment it ceased to be occupied for the purposes of a stud the rights of the landlord would revert, and it was he, and not the Government, who would have the benefit of the increased value the land."

29. Now, in the pottah of 1847, there is nothing to indicate that the duration of the lease is to be commensurate with the use of the proposed dock. It appears to me the land was given to the lessees for commercial purposes to make what money they could out of it," to use the words of the Privy Council, and I therefore think the case cited does not govern the present one.

30. It was stated on behalf of Rajah Sew Bux Bogla that the land belonged to Newaz Bibee's husband; that he died leaving her and one daughter surviving; and that this daughter married Hossain Ali, and by him had two sons, Sadut Ally and Futteh Hossain. Upon this state of facts Mr. Pugh contended that Newaz Bibee could only grant a 2 annas share in the land, and that therefore the pottah of the defendants only covered a 2 annas share of the premises in question, and that therefore the defendants were at most only temporary tenants of the other 14 annas share. No proof has been given of the facts stated, but assuming them to be correct I do not think the conclusions sought to be drawn from them are sound. The pottah purports to be a pottah of the whole 16 annas interest in the land. The agreement for the reduction of the rent consequent on a loss of a portion of the land was come to on that basis, and the rent suit, which I have before mentioned, was a suit for the rent of the whole land and not a fractional share of it, and was instituted by the persons entitled to the whole 16 annas of the reversion on the lease. Furthermore the rent receipts given by Sadut Ally and Futteh Hossain are receipts for the rent of the whole of the land and not of a fractional share of it. The rent was paid on this footing for a period of forty-two years, and it seems to me that the only natural conclusion to be drawn from these circumstances is either that Newaz Bibee had full power to deal with the entire interest in this piece of land, or if she had not originally that power, that her action was confirmed by her and her husband's heirs.

31. It was also stated that the title to the 2 annas share has been kept distinct from the title to the 14 annas share from the year 1864, but that mode of dealing with the reversion of the pottah of 1847, even if it were proved, which it has not been, is no evidence whatever as against the holders of this pottah, and I therefore think there is nothing in this contention which has been put forward, not by the plaintiff's, but by Rajah Sew Bux Bogla on the plaintiffs' behalf.

32. I do not propose to decide any questions which arise between Rajah Sew Bux Bogla and the other defendants, save in so far as they are questions which also arise between the plaintiffs and

Messrs. Anderson, Wright & Co. Any ground of attack and defence not available both to the plaintiffs and himself, as against the claim of Messrs. Anderson, Wright & Co. to have a permanent lease of these lands, remains untouched by me, and for that reason I decline to enter into the question as to the effect of Rajah Sew Bux Bogla's claim to be a bona fide purchaser for value of the premises in question without notice of any claim on the part of Messrs. Anderson, Wright & Co. to a permanent lease.

33. The whole of the last day of the hearing and a portion of the previous day were taken up in placing the case of the defendant Rajah Sew Bux Bogla before the Court. The plaintiffs protested against receiving any assistance from Rajah Sew Bux Bogla and against the prolongation of the trial, which would be caused by hearing him. The other defendants also protested against his being heard, but I did not see my way to yield to those objections. He must, however, pay the costs of the last day's hearing to the plaintiffs, and to Messrs, Anderson, Wright & Co., and he must also pay them their costs of the application which he made to become a party to this suit, those costs having been reserved.

Cases Referred.

1(1878) I.L.R., 4 Cal., 322

2(1892) I.L.R., 19 Cal., 358

3(1888) I.L.R., 16 Cal., 223; L.R., 16 I.A., 6