CALCUTTA HIGH COURT

Secy. of State

Vs

Lal Mohan Choudhury

(Nasim Ali, J.)

12.08.1935

JUDGMENT

Nasim Ali, J.

1. This is an appeal by the Secretary of State, the defendant in a suit brought by the plaintiffs-respondents in this Court for establishment of their jote right to the lands described in Schedule 1 to the plaint, and for recovery of possession of the lands described in Schedule 2, or in the alternative for recovery of possession of the said lands. The allegation of the plaintiffs on which their claim for relief in suit was based, was that the lands in question appertained to a lease granted to them by the Government on 8th November 1920. It was asserted by the plaintiffs that by subsequent unauthorized action on the part of the Government officers, they were deprived of 2.07 kanis of land out of 10 kanis odd, settled with them. The case of the Secretary of State was that from the settlement granted to the plaintiffs 2.07 kanis of land had to be excluded subsequently in view of a decree passed by the civil Court in Title Suit No. 214 of 1919; the aforesaid quantity of land had to be excluded from the plaintiffs' lease, and corresponding reduction from the rent payable by them was made. The Courts below arrived at the decision that regard being had to the provisions contained in the Crown Grants Act of 1895, the plaintiffs were not bound by any decree passed in Suit No. 214 of 1919; that Section 52, T.P. Act, could not apply to the lease granted to the plaintiffs, and that the lands described in Schedule 2 to the plaint were improperly excluded by the Government from the plaintiffs' lease. According to the learned Additional District Judge in the Court of appeal below it was quite clear that the lease which was granted by the Government could not be taken away in this way before the expiry of the terms of the lease; that in khas mahal transactions also the Crown Grants Act applied, and that Section 52, T.P. Act, on which the defendants relied, was not applicable to the case at all. The transaction evidenced by the lease in favour of the plaintiffs granted on 8th November 1920 was governed by the Crown Grants Act, and the plaintiffs were therefore entitled to recover the lands in suit as forming part of their lease.

2. The question for consideration in this appeal, that being the only question argued in support of the appeal, is whether the Crown Grants Act applied to khas mahal lands; if it did not, Section 52, T.P. Act, would apply, and the Government could not grant the settlement claimed by the plaintiffs in respect of the lands described in Schedule 2 to the plaint, and the lands were therefore rightly excluded from the plaintiffs' lease.

3. In our judgment the contentions urged on the side of the appellant must be allowed to prevail, for the reasons mentioned below: (1) The position of the Government in regard to khas mahal lands, is that of an ordinary landlord, the Government occupying no higher position than that of a zamindar; the settlement granted to the plaintiffs in the case before us, was by the khas Tahsildar, an officer of the Government in charge of a khas mahal, the Government being in possession of that mahal merely as a private proprietor. (2) The Crown Grants Act, 1895, was an enactment relating to the grants from the Crown, authorizing certain limitations and restrictions upon such grants made under its authority. A lease granted by a Government officer in charge of a khas mahal cannot fall within the category of grants from Crown as referred to in the Crown Grants Act. (3) If the Crown Grants Act had no application to the lease granted to the plaintiffs, as it could not have, Section 52, T.P. Act, was clearly applicable to the case before us, and the Government was justified, in view of the result of Title Suit No. 214 of 1919, in excluding the lands described in Schedule 2 of the plaint from the lease, granted to the plaintiffs on 8th November 1920.

4. For the reasons stated above; the action of the Government in excluding 2.07 kanis of land from the lease granted to them, to which exception was taken by the plaintiff in the suit, appears to us to have been justifiable and in accordance with law. In the above view of the case before us, the decision arrived at by the Courts below in favour of the plaintiffs-respondents, must be set aside, and the plaintiffs' suit dismissed. The appeal is allowed, the decision of the Courts below and the decrees passed by them are set aside, and the suit in which this appeal has arisen is dismissed with costs throughout.