

Arun Chandra Singh Vs. Kamini Kumar

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Court : Mumbai

Decided On : Dec-10-1913

Reported in : (1914)16BOMLR323

Judge : Shaw, ;Johan Edge and ;Ameer Ali, JJ.

Appellant : Arun Chandra Singh

Respondent : Kamini Kumar

Disposition : Appeal dismissed

Judgement :

Ameer Ali, J.

1. The sole question involved in this appeal, which is from a judgment and decree of the High Court of Bengal, relates to the title to certain lands that had been washed away some years ago by the river Siddhi in the Noakhali district and have since reformed in consequence of a change in the course of the stream.

2. The plaintiffs, appellants, are the owners of a Zamindari called Pergunnah Bhulua, situated in that district. Within this Zamindari lies a palni tenure called Talu Ram Saran Pal, created so long ago as 1837 by one of the predecessors in title of the present zemindars. The Taluk is now owned by the first and second defendant, respondents in this appeal. The remaining numerous defendants are ryots placed

on the land, by the patnidars, since its reformation.

3. The Dowl Kabuliat executed by the patnidar in respect of the tenure shows that it comprises parts of two kistnats or subdivisions of villages named respectively Kismat Paniartek and Kismat Algi; and the area included in the Taluk was evidently given approximately, for the lease contains the following covenant

If the land be found to be more on measurement by Nal prevalent according to the of the pergunnah, I shall separately pay the rent 1913 thereof at this rate; if it be found to be less, I shall get remission there for.

4. Their Lordships have little doubt that the reason for the Chakdea approximate statement of the area and the particular provision regarding the variation of the rent in certain probable Kamini contingencies was due to the fact, which has not been seriously controverted, that a strong tidal river flowed close Mr. Ameer to the boundaries of the Taluk in question.

5. It is in evidence that in 1843 the plaintiffs obtained a decree in the Revenue Courts for increased rent on the ground that additional land was found upon measurement to be in the patnidar's possession.

6. Later, considerable parts of the Algi lands having been washed away by the action of the river, the defendants obtained, under the provisions of Section 19 of the Bengal Council Act (VIII of 1869), a proportionate remission of rent. The last proceeding in this respect was in 1889.

7. Since then the diluviated lands have re-appeared and admittedly reformed in situ. With their re-appearance disputes arose between the parties; the plaintiffs claimed that the lands in question formed part of their Zamindari, which the defendants contended that they were accretions to the Taluk. Each party attempted to exercise rights of ownerships in order to create evidence of adverse possession against the other side. Their Lordships agree with the High Court that the evidence on this point, is wholly inconclusive.

8. The suit was brought by the plaintiffs, the Zamindars, in June 1906 to obtain khas or direct and exclusive possession of the lands in question by a declaration

of their title, the usual form of relief asked for in the Indian Courts in these cases. In the alternative they urged that if their claim to khas possession failed, it might be declared that the defendants were entitled to hold the land subject to the payment of proper rent for the same. The defendants, besides pleading that the lands in suit were accretions to their Taluk, urged that the Zamindars were only entitled to rent, but not to khas possession.

9. The District Judge made a decree in the plaintiffs' favour, substantially on the ground that as the defendants had obtained abatement of rent in respect of the lands that had been washed away by the river, they had lost all title to the reformed lands. On appeal the High Court has taken a different view. It has held in substance that having regard to the terms of the contract and the conduct of the parties, the plaintiffs had no right to eject the defendants from lands which originally formed part of Kistnat Algi and had been washed away by the river. They accordingly dismissed the plaintiffs' suit. In their Lordships' opinion the learned Judges are right in holding that the lands do not come within the provisions of Section 4 of Regulation XI of 1825, and cannot be claimed by either party as accretions to their respective property. The learned Judges of the High Court appear, however, to have laid too much stress on the terms of the kabuliat and the evidence of intention deducible from the various proceedings in respect of additional rent and abatement of rent. They evidently felt pressed by an older ruling of the Calcutta High Court in *Hemnath Dutt v. Ashgur Sindar* (1879) I.L. Rule 4 Cal. 894. Their Lordships, however, do not find themselves in accord with the rule of law expressed in that case. They think that the principle applicable to this class of cases is correctly enunciated in *Mazhar Rai v. Ramgat Singh* I.L.R. (1896) All. 290.

10. In the present case there is nothing to show that, by claiming or accepting remission of rent in respect of lands washed away from time to time by the action of the river, the defendants abandoned, or agreed to abandon, their rights to such lands on their reformation in situ, as is admittedly the case here. The diluviated lands formed part of a permanent, heritable, and transferable tenure; until it can be established that the holder of the tenure has abandoned his right to the submerged lands it remains intact.

11. In the result their Lordships are of opinion that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

12. This decree, however, will be no bar to any proceeding on the part of the plaintiffs authorized by law to recover proper rent in respect of the reformed lands.

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