

Ramsasi Roy and ors. Vs. Bolai Lal Seal and on His Death His Seirs and Legal Represent Tives. Bejoy Lal Seal and ors.

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Court : Kolkata

Decided On : May-29-1919

Reported in : 53Ind.Cas.890

Judge : Asutosh Chaudhuri and ;Coming, JJ.

Appellant : Ramsasi Roy and ors.

Respondent : Bolai Lal Seal and on His Death His Seirs and Legal Represent Tives. Bejoy Lal Seal and ors.

Judgement :

1. This suit is for a declaration that the defendant No. 1 had no transferable Kaimi right to the disputed land or any right to construct buildings thereon and that the defendant No. 4 had not acquired any right to construct buildings thereon by the purchase of the leasehold rights said to have been created by defendants Nos. 2 and 3. The plaintiffs also prayed for permanent and ad interim injunctions.

2. The plaintiffs are the proprietors of certain lands bearing Touzi Nos. 3, 94 and 3994 A. Their case is that within that Mahal there is a Thika Garkaimi Jama of Rs. 92-11-5 recorded in the plaintiffs' sheristu in the name of late Hara Chandra Lahiri, that out of the said lands a certain quantity was acquired by the Government and that the disputed land is said to be 7 bighas described in Schedule Ga as

appertaining to this Jama. It is upon these allegations that the plaintiffs sought relief in this suit.

3. Several issues were raised, and it is noticeable that although it was suggested at one stage that these 7 bighas of land might have formed part of Certain other lands belonging to the plaintiffs, yet there was no distinct issue raised with regard to that matter before the trial Court. The learned Subordinate Judge referred to issue No. 6 and said that it appeared to him to have been drawn up in an alternative form 'which had been characterized in several decisions of this Court to be erroneous and misleading,' and he said that the proper issue was whether the land in dispute was included within the plaintiffs' alleged Jama in the name of Hara Chandra Lahiri, as to which the plaintiffs Sought a declaration of the character referred to already, namely, that it was a Thika Garkaimi or temporary Jama. That was really the issue which was accepted and decided. The learned Subordinate Judge came to the conclusion that it was for the plaintiffs to show that any portion of the disputed land was within this Jama and that they had failed to show that it was. He also went into the question of the character of the Jama, although having regard to his findings he felt that it was unnecessary to do so. He held that this Jama which stood in the name of Hara Chandra Lahiri originally stood in the name of Krishna Sundari Dasi. As to when it came into existence he was unable to ascertain. That it certainly did exist before 148 was the conclusion he had arrived at; and he said that probably it came into existence so nowhere in 1820 or 1833. He says that the river receded about a century ago and lands were formed. Then there¹ was the usual scramble by the neighboring landlords and the Government also stepped in. Litigation followed and settlements were made by the Government. The settlement took place in 1845 and the Touzis above mentioned were formed by which the plaintiffs became the Maliks. In the Settlement Rabakari in connection with these Touzis reference is made to this Jama, which was found to be in the possession of Krishna Sundari Dasi. A Kabuliyat was taken from her in August 1846. That Kabuliyat does not moreover seem to have been the final document as sanction from the Board was expected at that time and, therefore, the terms of that Kabuliyat were not considered by the learned Subordinate Judge as of any importance. It appears that a little time thereafter Hara Chandra Lahiri acquired this Jama by virtue of a Kobala executed by this lady. He was recognised

as the rightful purchaser of the Jama by the superior proprietors. He thereafter mortgaged it to certain people. It was then sold at the instance of the mortgagees and a lady of the name of Rasamoye Dasi purchased it. She was the Benamdar of a well-known Calcutta Zemindar named Motif Lal Seal. From the time it came into her possession it has descended to the successors, the Seals, generation after generation, and it was now in the hands of the 4th generation. The learned Subordinate Judge has found that during this time there was unmistakable recognition of the heritable, alienable and transmissible character of this Jama. He also found that the rent was a fixed rent, and regard being had also to much litigation arising out of land acquisition proceedings and rent suits, he came to the conclusion that the Jama was a Kaimi Jama.

4. In appeal the learned Judge has practically arrived at the same conclusions. He holds that, the plaintiffs have not succeeded in proving that the land described in Schedule Ga or any portion of it is included within the Jama which was in the name of Hara Chandra Lahiri, and in addition to the facts found by the Subordinate Judge he also relies upon the fact that substantial structures were raised on this land which was surrounded by walls and that houses were erected without any opposition from the landlords, Upon these findings the conclusion that the lower Courts have arrived at must be upheld.

5. It has been argued before us, however, that another point another in connection with this case which has not been considered, namely, that the 7 bighas in dispute or at any rate some portion of it may not belong to the Jama in the name of Hara Chandra Labiri, but may appertain to the mal lands of the plaintiffs in the Tons above mentioned. That case was never made before this. In these cases it is absolutely essential that the boundaries should be clearly given in order to help the Court to find out what is actually in dispute and against what portion the injunction is sought to be effected. A map ought to be attached to the plaint. Vague descriptions of the boundary, such as 'land in the possession of the plaintiff or land in the possession of the defendant,' ought not be accepted. It is also very desirable the issues should so be framed that the Court may understand the actual points arising for its determination, and it ought not to be left open to the parties to raise equivocal, ambiguous and evasive issues which one frequently finds raised in

trials of this character. It is the duty of the Court to settle the issues and render them dear. We are unable to change the character of the suit now and start an enquiry as to whether the plaintiffs would have been entitled if they had claimed any right to the disputed land as belonging to their own mal lands. We were asked to give them leave to withdraw the present suit with liberty to institute a fresh suit. We do not think we can accede to this request at this stage. If they have any claim that the land is land really belonging to them as mal land but does not appertain to this Jama, it may, be that they will be able to pursue their remedies. With regard to that we do not desire to express our opinion having regard to the findings, which are clearly expressed and correctly decided.

6. This appeal is dismissed with costs.

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