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Court : Kolkata

Decided On : May-02-1924

Reported in : AIR1925Cal249

Appellant : Chandra Kumar Aich and ors.

Respondent : Jiban Krishna Nath Mohajan

Judgement :

Walmsley, J.

1. This appeal is preferred by some of the defendants, against a judgment of the District Judge of Chittagong, which affirmed with slight modifications the decree of the first Court.

2. The plaintiff bought Noabad Taluq Mahammad Daim Najir at a sale bold under the provisions of Act XI (B.C.) of 1859, on August 7, 1913, and he then brought two suits for recovery of khas possession and for mesne profits. One suit, No. 297, related to 52: 3 kanis of land in Cadastral Survey plot No. 17/13564, and the other to the whole of that plot with certain other plots. It is not necessary to mention the reasons which led the plaintiff to bring two suits, instead of one. The two suits were heard together. The first Court gave him a decree for khas possession and for mesne profits. Then the defendants, or some of them filed two appeals; these again were dealt with in one judgment. The learned Judge upheld the decision of the first Court with this modification viz., that he directed that the area of the lands

covered by the decree was not to be stated, and that the decree should not make any reference to the Cadastral Survey map. The defendants have appealed, and there is a cross-objection by the plaintiff.

3. The case is an obscure one, and the arguments advanced on behalf of the appellants did not help to remove the obscurity. Their main contention, however, is that the defendants have a protected interest although the land is admittedly alluvial in character. It is said that the provisions of Section 180 of the Tenancy Act do not apply, and the reason alleged for this argument is that the principle laid down in the case of *Felix Lopez v. Muddun Mohun Thakoor* (1869-70) 13 M.I.A. 467 is applicable here, and that in consequence the land is not chur but the old land re-formed on its original site. This argument is unsound. The decision just mentioned laid down the principle to be applied in dealing with questions of title to land reformed in situ: it directed that when land re-formed on the site of a diluviated estate, the owner of that estate, if he had continued to pay revenue while the site was under water, was entitled to claim the land as belonging to his estate, and that such land was not to be dealt with under the provisions of Reg. XI of 1825. It is true that in the preamble to that Regulation the words 'churs or small islands,' appear, but that is not a definition of the word 'chur' and it cannot be held that land which is reformation in situ may not also be chur land. The word 'chur' as used in Section 180 of the Tenancy Act must be understood in its ordinary sense of land formed by fluvial action, that is to say, it is a word referring to the character of the soil, and not to the site of the deposit. I have no doubt, therefore, that the Courts below are right in saying that the provisions of Section 180 of the Tenancy Act are applicable to the land in suit. It follows that the tenant-defendants to escape eviction must prove continuous possession for 12 years of the identical plots in their possession at the date of the institution of the suit. On this question there is a definite finding of fact; that they have failed to do so.

4. The other objections put forward on behalf of the defendants relate to the form of the decree, which is said to be bad because it does not specify the area to which the plaintiff's title is declared, It seems singular that this objection should come from the defendants, for it is they and not the plaintiff who benefit by the remarks made by the learned Judge in the closing paragraphs of his judgment. In

fact, these remarks are the subject-matter of the plaintiff's cross objection. Consequently, I think that this second argument for the defendants fails.

5. With regard to the cross-objection, the position is this. After the creation, of the Noabad Taluq in 1898, some of the lands comprised within it was settled with Nabin Chandra Mohajan and afterwards with Gagan Chandra Aich by the Collector. That may have been wrong, but the learned Judge hat held that in the absence of the Secretary of State as a party he cannot give the plaintiff a decree which would have the effect of disturbing the possession of those who have entered on the lands by virtue of that settlement. I think that is a right view and consequently that the cross objection cannot be sustained. The result is that the appeal and the cross-objection are both dismissed. No order is made as to costs.

Mukerji, J.

6. This appeal arises out of two suits instituted by the plaintiff as purchasers at a revenue sale for establishing his title and for recovery of khas possession by ejecting the defendants and for mesne profits. A part of C.S. Plot 17/13,064 is the subject-matter of suit No. 297, while the said plot together with nine others are the subject-matter of Suit No. 302. The main defence of the defendants in the suits was that they are ryots with right of occupancy and are moreover settled ryots of the village and, therefore, their interests were protected.

7. The learned Munsif decreed the plaintiff's' suits in their entirety consolidating the; two suits into one, and awarded costs to the plaintiff only in respect of Suit No. 302 and ordered that mesne profits would be* ascertained subsequently on plaintiff's application. On appeals preferred by defendants the learned D. J. held that the plaintiff was entitled to a decree declaring his title to the plots specified in the plaint in Suit No. 302. He held also that a decree in Suit No. 297 was unnecessary as the subject-matter of that suit, namely, a part of C.S. Plot 17/13564, was wholly included in suit No. 302 but he saw no reason to cancel it. As to plot No. 17/13564, however, he found that a part of it, namely that covered by the Kabuliyat Exhibit F, was claimed by Government and had been settled by them as khas mahal lands with Nabin Ch. Mohajan in 1912 and re-settled with

Gagan Ch. Aich in 1913. As the Secretary of State was not a party to the suit it was not right, in the opinion of the learned District Judge, to decide finally, as to what was the exact area to which the plaintiff was entitled to a decree and so he directed that the area of the C.S. plots should not be entered in the decree, but that the decree for khas possession should be limited to the portion depicted in the Commissioner's map covering an area of 1 drone, 8 kanis, 18 gandas which had always been admitted by Government to fall within the plaintiff taluk, and he held that of that area the plaintiff could safely take possession. He made a variation in the order as to costs and upheld the decree as to mesne profits.

8. The defendant's chief contentions in this appeal are two: 1st that in the absence of specification of area the decree declaring the plaintiff's title and for ejectment of the defendants is bad in law, and 2nd that Section 180 of the Bengal Tenancy Act has no application to the chur in question as the operation of that section is limited to churs to which Reg. 11 of 1825 applies.

9. With regard to the first of these contentions a bare statement of the facts is sufficient to demonstrate its futility. The taluk in question is Noabad Taluk created by Government in 1898 and the settlement made by Government in favour of the plaintiff's predecessors gave certain dags which are specified in the plaint in Suit No. 302. Thereafter the Government settled certain lands of the chur with Nabin Ch. Mahajan as per Exhibit F in 1912 and the same were re-settled with Gagan Chandra Aich in 1913. Parts of lands covered by these settlements were portions of the plaintiff's taluk. The mistake arose from circumstances which need not be gone into here. The learned District Judge has held that the plaintiff was entitled to a decree declaring his title to all the dags covered by the settlement of 1898; and there is no difficulty in that respect as the said dags are mentioned in the plaint. As for khas possession he has held that there can be no possible objection to the plaintiff taking khas possession of such portions of the said dag to which the Government has never preferred any claim and having found from the Commissioner's map the portion so defined and being of opinion that the plaintiff can safely take khas possession of that portion, has awarded the plaintiff a decree in respect of it. The appellant's first contention, therefore, in my opinion, has no substance.

10. As for the second contention there is no authority for the proposition that the word 'chur' is used in that limited sense in Section 180 of the Bengal Tenancy Act. I am not prepared to accept this interpretation as I can find no principle upon which such a view may be supported. The findings of fact as to the length of occupation by the appellants also negative any suggestion of their having acquired any protected interest in the lands.

11. Several other objections were urged on behalf of the appellant, but I do not think it necessary to notice them as in my opinion, they either do not arise in view of what I have said above or are matters which really affect the question of appreciation of evidence with which we are not concerned in second appeal.

12. The appeals, therefore, must fail.

13. The cross-objection of the respondents that he should be awarded a decree for khas possession in respect of all the lands with the exception on the land covered by Exhibit F must also fail as it is evident from the observations of the learned District Judge that having regard to the fact that the Secretary of State was not a party to this litigation, it is desirable to confine the decree to only such lands as may safely be held to be lands to which the Secretary of State has never preferred any claim.. If more lands have been excluded than what are actually claimed by Government the plaintiff must get the matter decided in the presence of the Secretary of State.

14. As the appeals and the cross-objection both fail, I would make no order as to costs in this Court.