Gocoolmoni Dossee Vs. Koylashbashiny Dossee

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Court : Kolkata

Decided On : Aug-25-1881

Reported in : (1882)ILR8Cal230

Judge : Prinsep and ;Field, JJ.

Appellant : Gocoolmoni Dossee

Respondent : Koylashbashiny Dossee

Judgement :

Field, J.

1. In this case the plaintiff is an auction-purchaser at a sale for arrears of Government revenue. He purchased a holding No. 123, which consists of some five bighas odd. He has brought the present case to evict certain persons who hold some three bighas of this holding under an alleged lakheraj title. The plaint has been framed in very wide language. The plaintiff alleges the fact of the purchase at a revenue-sale by her assignee. She then alleges that the right acquired by this revenue-sale was a right to hold the property purchased free of all incumbrances; and she concludes the plaint with a prayer that the defendant may be ejected, that khas possession may be given to her, and that she may be declared entitled to hold the land free of all incumbrances.

2. Now, at one part of the argument it was contended, that this is really a suit to avoid an incumbrance, and is based upon the statutory right conferred by Section 12 of Beng. Act VII of 1868; but we think it would not be fair to tie up the plaintiff and limit the construction of the prayer in her plaint by regarding it as merely a prayer to avoid an incumbrance under this section just referred to. That section declares that 'the purchaser of any tenure sold under the provisions of Section 11 of this Act shall acquire it free from all incumbrances which may have been imposed upon it after its creation or after the time of settlement, whichever may have last occurred, and she be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants.' Now, it has been decided, that a person seeking to take the benefit of this statutory enactment must give some prima facie evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section,--that is, an incumbrance imposed upon the tenure by some person who previously held it. In this case we think there is no such evidence, and that if the plaintiff were seeking to rely merely upon the statutory right of avoidance conferred by the section, her suit must fail. But we think there is another view which may fairly be taken of the case upon the plaint and the written statement of the defendant, and that is, that this is really a suit to resume lakheraj land. The defendant sets up a lakheraj title, and what really occurred in the lower Courts was a trial of the validity of this title. The issues framed by the Munsif were, in our opinion, not sufficiently satisfactory, regard being had to the allegations of the defendant; and we think that, in consequence, it will be necessary to remand this case to have certain inquiries made which were not made owing to the informal nature of the issues framed in the Court of First Instance. In order to guide the lower Court as to the course to be pursued upon the remand, it will be necessary to refer briefly to the law concerned with the subject of lakheraj grants. Now badshahi lakheraj grants were of three kinds: Firstly, grants made before the 12th August 1765; secondly, grants made after the 12th August 1765, but antecedent to the 1st December 1790; and thirdly, grants made subsequently to the 1st December 1790. As to the first two classes, it is only necessary to remark, that if a person claiming to hold under a grant falling within either of these two classes can show that he has held the land as lakheraj since the 1st December 1790, according to the law as it at present stands, this will be a

conclusive bar, whether the suit to resume is brought by the Government, by a purchaser at a revenue sale, or by any other person. In order to prove a grant anterior to the 1st December, it is thus sufficient to give evidence of possession as lakherajdar dating back to 1790: see the case of Sristeedhur Sawunt v. Romanath Rokhit 6 W.R. 58. Then as to the third class, that is, grants made after the 1st December 1790, the old Regulation enacted that such grants whether exceeding or not exceeding 100 bighas, shall be null and void. It, therefore, follows that, apart from the law of limitation, the Government or an auction-purchaser or a zamindar is entitled to resume any lakheraj grant made subsequent to the 1st December 1790. Then we must apply the law of limitation. In the case of Government or any person claiming under Government, Article [Article 149:

Description of suit. Period of Time from which period begins to run.

limitation.

Any suit by or on behalf of the Sixty years When the period of limitation

Secretary of State for India in would begin to run under this Act

Council. against a like suit by a private

person.]

of the Limitation Act provides the period of sixty years; and it therefore follows that the Government or an auction-purchaser claiming under the Government must sue within sixty years after the cause of action arose to resume lakheraj land, even although held on a grant alleged to have been made after 1790. In the case of a mere auction-purchaser, Articles 121 and [Article 130:

Description of suit. Period of Time from which period begins to run.

limitation.

For the resumption or assess Twelve years. When the right to resume or assess

ment or rent free land. the land first accrues.]

to Government. In other words, if the period of sixty years expired before the expiry of the twelve years' period in any case in which the purchaser would be subject to the sixty years' rule, such purchaser would only have so much of the twelve years' period as was also covered by the sixty years' period. In the case now before us, the defendant alleged that the land was lakheraj. It is not distinctly stated that the lakheraj was created prior to 1790, but we think that we may fairly assume that that was intended, as otherwise an allegation of a lakheraj title created since 1790 would be no answer to the suit, unless that lakheraj title were created after 1790, and before a date sixty years before the institution of this suit. The Munsif dismissed the plaintiff's suit. The Additional Judge reversed the decision of the Munsif, and was of opinion that the burden of proof was upon the defendant. We think in this view the Additional Judge was in error. According to the Full Bench decision in Parbati Charan Mookerjee v. Rajkrishna Mookerjee B.L.R. Sup. Vol. 162 the burden of proof is upon the zamindar who seeks to resume lakheraj land, alleging that such lakheraj is invalid by reason of its having been created since 1790. We think that, upon the pleadings in this case, we must take it that the plaintiff here seeks to resume lakheraj land, and that she seeks to resume it on the only ground upon which, in the present state of the law, she can resume it; on the ground, namely, that the grant is void by reason of the lakheraj tenure having been created since the 1st December 1790. We may refer to the cases of Sonatan Ghose v. Moulvi Abdul Farar B.L.R. Sup. Vol. 109 and Hurryhur Mookhopadhya v. Madub Chunder Baboo 14 Moores I.A. 152; S.C 8 B.L.R. 566. What then must be done in this case is as follows: The plaintiff must give prima fade evidence to show that rent has been paid for this land at some time since the 1st December 1790. If she gives such evidence, it will then lie upon the defendant to rebut that evidence by proving, if she can, a valid lakheraj grant. We do not express any opinion upon the value of the evidence supplied by the proceedings of Mr. Crow. The value of that evidence is a question solely for the consideration of the Judge below. We will only observe that, in order to estimate properly the value of that evidence, the Judge ought to inform himself as to the nature of the proceedings in which Mr. Crow was engaged and as to the nature of the jurisdiction he was exercising.

3. Then it is contended, that the defendant has succeeded in showing that this land has been held as lakheraj for the last sixty years, and that, under Article 149 [q. v. supra, 8 Cal. 235.] of the second schedule of the Limitation Act, this is a complete answer to the case. We think that if the defendant is able to show that the land has been held as lakheraj for the last sixty years, this is a good defence, and it will relieve the defendant from rebutting the plaintiff's case by evidence of a valid grant, or of possession extending back to 1790; if the defendant has to rely upon such evidence of possession merely, and is not able to give proof of the original lakheraj grant, the decree of the Additional Judge will be reversed. The case will be remanded to the lower Appellate Court to be dealt with in accordance with these directions; and the costs of this Court will follow the result.