

Bhupendra Narayan Singh Vs. Nurput Singh

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Court : Kolkata

Decided On : Jun-23-1922

Reported in : AIR1923Cal451,84Ind.Cas.581

Judge : Lancelot Sanderson, C.J. and ;B.B. Ghose, J.

Appellant : Bhupendra Narayan Singh

Respondent : Nurput Singh

Judgement :

Lancelot Sanderson, C.J.

1. This is an. application for a certificate that these; are fit cases for appeal to the Judicial Committee of the Privy Council; they are numbered Nos. 9 to 26 of 1922. The appellant is Raja Bhupendra Narain Singh Bahadur and the respondent is Nurput Single They were second appeals, that is to say, appeals to this Court from the decision of the lower Appellate Court and were disposed of by my learned brothers Greaves and Ghose, JJ., in one judgment.

2. It is admitted by the learned Vakil for the appellant that the subject-matter of the appeals, when taken together, will not be of sufficient value to justify us in granting a certificate having regard to the terms of the first clause of Section 110 of the C.P.C.

3. The grounds,, upon which the application was argund, are the 8th and 9th of the petition which are as follows:

8. For that your petitioner begs to submit further that the decision of this Hon'ble Court will affect indirectly a large number of resumed choukidari chakran lands within his estate and your petitioner will lose at least an annual income of about Rs. 5,000 (details of which will be submitted later on) if the decision of this Hon'ble Court is permitted to stand and that the several suits aforesaid may be consolidated and the decrees involve question or claim to or respecting property of over Rs. 10,000 in amount of value.

9. That your petitioner further craves leave to state that the decision involves not merely a question of individual or private importance but a question of wide public importance and will affect the property and income of many zemindars in Bengal, benefited or benefiting by the resumption of choukidari chakran lands by the Collector under Act VI of 1870 and as such, even if the appeals do not satisfy the statutory value, may be certified as otherwise a fit case, for leave to appeal to His Majesty in Council under Section 109, Clause (c) of the C.P.C.

4. The facts which are necessary for me to state are as follows: 'The suits were brought to recover khas possession of certain resumed choukidari chakran lands together with mesne profits. The plaintiff claimed these lands as included in the putni taluk granted to his predecessors-in-interest by the predecessors-in-interest of the first defendant, who is the zemindar, by a putni patta of the year 1853, the Bengali date being the 29th Kartik 1260. It is not disputed that the lands in question were included in the putni patta, but it is said that these lands were not taken into account in settling the rent payable under the patta and that consequently the zemindar, the respondent, is entitled to a share of the rent derived from settling the resumed lands with tenants. No dispute arises with regard to the payment of the Government Revenue which has been assessed on the resumed lands and which, under the terms of the putni patta, is payable by the appellant. It is conceded that, from the time of the creation of the putni until the lands were resumed, the choukidars rendered private personal service to the putnidar, and not to the zemindar.

5. It was argued on behalf of the zemindar that the lands which had been resumed, that is to say, the choukidari chakran lands, were not taken into account when the jama was fixed. On the other hand, it was contended on behalf of the plaintiff that the lands were comprised in the putni patta and consequently it must follow that the rents and profits of these lands belonged to the putnidar, and further that the rents and profits must be taken as the equivalent of the personal service which had been rendered to the putnidar by the choukidars before the resumption.

6. As to the first ground, it is suggested that the decision of this Court indirectly affects a number of other resumed lands within the estate of the appellant and that the appellant will lose at least an annual income of rupees five thousand, the details of which were to be given later on, and that if that amount is taken into consideration, there would be a question relating to property of the value of rupees ten thousand. Before this Court could, come to a decision on that question, it would be necessary to investigate whether the terms of the various leases between the appellant on the one hand and the putnidars on the other in respect of the lands, which are not included in these suits, are the same as the terms of the patta in these cases. Further it would be necessary to ascertain the facts and conditions existing at the time those leases were granted and to inquire whether in each case the services of the choukidars were rendered to the putnidars or to the zemindar. It is only necessary to state these facts to see that on this application it is not possible for this Court to hold that the decree involves directly or indirectly a claim or question to or respecting property of the amount or value of Rs. 10,000. Consequently, in my judgment, the first ground, on which the applicant relied, must fail.

7. It was upon the second ground that the learned Vakil for the applicant chiefly relied, namely, that the question involved in the decision of this Court is not only a question of private importance but is a question of wide public importance. It was alleged as a ground in the petition that it would affect the property and income of many zemindars in Pengal. In order to establish this allegation the learned Vakil drew our attention to six or seven reported cases. These cases go to show that there have been frequent disputes between the putnidars on the one hand and the zemindars on the other relating to choukidari chakran lands which have been

resumed. The fact, however, that there have been in the past many disputes in relation to such lands between the putnidars and zemindars, does not prove that the decision of this Court in these suits involves a question of wide public importance. On the contrary, when the reported cases are examined, it appears that the facts relating to the respective cases, vary considerably, and the cases certainly do not show that the facts proved in these suits are such as would cover the arrangements between putnidars and zemindars in Bengal generally. Before the Court could come to the conclusion that this decision involves a question of wide public importance, there should be some evidence that the rights of the zemindars and the putnidats in Bengal in respect of such lands are, generally speaking, dependent upon the same facts as appear in these suits and that the terms of the leases regulating such rights are similar to the terms of the pattas in these suits. There is no evidence before the Court which would justify us in arriving at that conclusion.

8. It has been pointed out in some of the cases, to which we have been referred, that each case must depend upon its own facts; as for instance, in the case of Maharajadhiraj Sir Bejoy Chand Mahatab Bahadur V. Krishna Chandra Mukerji 66 Ind. Cas. 357 : 34 C.L.J. it was stated that the question, whether the plaintiffs, the putnidars, were entitled to have the lands on payment of the assessment payable to the choukidari fund or were liable to pay some additional rent on account of the land to the zemindar, no doubt, should be decided having regard to the terms of the contract in each case.

9. In my judgment there is not sufficient evidence before us at the present time to justify the Court in holding that the decision in these suits involves a question of wide public importance and in certifying that these are fit cases for appeal to the Judicial Committee of the Privy Council. Consequently, in my judgment, these applications must be dismissed with costs, ten gold mohurs for the eighteen cases.

Ghose, J.

10. I agree. As I was a party to the decision sought to be appealed against, I should have been glad if certificates could have been granted in these cases for leave to appeal to the Judicial Committee. I have nothing to add to the reasons given by my Lord the Chief Justice in his judgment for refusing leave.

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