

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

BIRENDRA KISHORE MANIKYA

v.

KALITARA DEBI.*

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July 13.

Bengal Tenancy Act (VIII of 1885) s. 102—Its amendment in 1898—Effect of s. 102—Settlement Officer, power of.

Section 102 of the Bengal Tenancy Act has now been amended by the insertion of a new clause which expressly authorises the Settlement Officer to decide when the land is claimed to be held rent-free—whether or not rent is actually paid, and if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled under what authority. The very circumstance that the Legislature has inserted this clause in section 102 points to the conclusion that the matter provided for thereunder is not covered by the other clauses of section 102.

The Legislature could not possibly have intended to accord finality to a decision of a dispute by a Settlement Officer which it was beyond the jurisdiction of the Revenue Officer to decide under section 106 of the Bengal Tenancy Act.

Radha Kishore v. Durganath (1), *Donay Dass v. Keshub Pruhti* (2), *Nabin Chandra v. Radha Kishore* (3), *Nikunja Behary v. Radha Kishore* (4), *Secretary of State for India v. Nitye Singh* (5), *Dharani Kanta Lahiri v. Gaber Ali Khan* (6), *Karmi Khan v. Brojo Nath Das* (7) and *Birendra v. Bhoirab* (8) referred to.

SECOND APPEAL by Maharaja Birendra Kishore Manikya, the plaintiff.

* Appeal from Appellate Decree, No. 475 of 1911, against the decree of A. H. Cuming, District Judge of Tippera, dated Nov. 29, 1910, reversing the decree of Fanindra Mohan Chatterjee, Munsif of Tippera, dated Nov. 30, 1909.

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| (1) (1904) I. L. R. 32 Calc. 162. | (5) (1893) I. L. R. 21 Calc. 38. |
| (2) (1904) 8 C. W. N. 741. | (6) (1902) I. L. R. 30 Calc. 339. |
| (3) (1907) 11 C. W. N. 859. | (7) (1894) I. L. R. 22 Calc. 244, 248. |
| (4) (1903) 22 C. L. J. 148. | (8) (1913) 20 C. L. J. 295. |

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This appeal arises out of a suit instituted by the plaintiff for declaration of title to the land in suit and for declaration that the defendant held the same under the plaintiff on a jama of Rs. 33-4 or, in the alternative, for an assessment of rent and for arrears of rent. The defendant contended that they held the land under a rent-free grant and pleaded limitation. The learned Munsif decreed the suit but, on appeal, the lower Appellate Court dismissed the suit. Hence this second appeal by the plaintiff.

Babu Birendra Chandra Das (with him *Babu Dwarka Nath Chuckerbutty*), for the appellant, contended that in a proceeding under Chapter X of the Bengal Tenancy Act the Settlement Officer assessed Rs. 33-4 as fair and equitable rent of the land. This decision in favour of the plaintiff was made on the 17th of April 1898. The learned vakil contended that the decision of the Settlement Officer was final and operated as *res judicata*, and relied upon section 9 of Act III of 1898. He further submitted that the Settlement Officer had jurisdiction to decide the question whether the land was rent-free or not: *Nabin Chandra v. Radha Kishore* (1), *Donay Dass v. Keshub Prukti* (2), *Secretary of State for India v. Nitye Singh* (3), *Radha Kishore v. Durganath* (4).

Babu Bipin Chandra Bose, for the respondent, was not called upon.

MOOKERJEE AND BEACHCROFT JJ. This is an appeal by the plaintiff in a suit for assessment of rent of land, which, the defendants contend, they hold under a rent-free title. The Court of first instance found in favour of the plaintiff and decreed the suit.

(1) (1907) 11 C. W. N. 859.

(2) (1904) 8 C. W. N. 741.

(3) (1893) I. L. R. 21 Calc. 38.

(4) (1904) I. L. R. 32 Calc. 162.

Upon appeal, the District Judge has reversed that decision, and, has held, *first*, that the decision of the question by the Settlement Officer does not conclude the matter in controversy; and, *secondly*, that from the long and uninterrupted possession of the defendants without payment of rent to the plaintiff or his predecessor, the inference may legitimately be drawn that the original grant was rent-free. On the present appeal, the validity of the conclusion of the District Judge upon the second aspect of the case has not been disputed, but it has been argued that the decision of the Settlement Officer, which was adverse to the defendants, operates as *res judicata*, and that it was not open to the District Judge to come to an independent determination on the merits.

From an examination of the record, it transpires that on the 17th April 1897, the Settlement Officer decided, in the course of a proceeding under Chapter X of the Bengal Tenancy Act, that the present defendants had failed to establish before him their alleged rent-free title. On the basis of this decision of the dispute between the parties, the rent was subsequently settled and the record was finally published on the 1st December 1898. The appellant now contends, with reference to sub-section I of section 9 of Beng. Act- III of 1898, which came into force on the 2nd November 1898, that the decision of the Revenue Officer, though prior in point of time, was embodied in a Record of Rights published afterwards and precludes an investigation of the matter by the Civil Court.

Sub-section (1) of section 9 is in these terms: "Every settlement of rent or decision of a dispute by a Revenue-officer under section 104 or section 106 of the Bengal Tenancy Act, 1885, before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred

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to the Special Judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final." The appellant argues that there was a decision of a dispute by a Revenue Officer under section 106 of the Bengal Tenancy Act, 1885, and that such decision has the force and effect of a decree of a Civil Court in a suit between the parties and is final. This contention is based upon a superficial view of the provisions of sub-section (1) of section 9. It was ruled by this Court in the case of *Radha Kishore v. Durganath* (1) that the words "every settlement of rent or decision of a dispute by a Revenue Officer" in section 9 are applicable only to those cases which a Revenue Officer has jurisdiction to try and are not applicable to a decision of a Settlement Officer as to the validity of a lakhiraj title under section 104 of the Bengal Tenancy Act, 1885. This conclusion coincides with the decision in *Donay Dass v. Keshub Pruhti* (2), where Mr. Justice Ghose observed that the Legislature could not possibly have intended to accord finality to a decision of a dispute by a Settlement Officer which it was beyond the jurisdiction of the Revenue Officer to decide under section 106. This view is, in our opinion, eminently reasonable. Reliance, however, has been placed upon the later decision in *Nabin Chandra v. Radha Kishore* (3) where the attention of the Court was not drawn to the cases of *Donay Dass v. Keshub Pruhti* (2) and *Radha Kishore v. Durganath* (1). There is a dictum in this judgment to the effect that the doctrine of *res judicata* applies, irrespective of the question whether the decision of the Revenue Officer was or was not competent under section 104 or 106. In

(1) (1904) I. L. R. 32 Calc. 162. (2) (1904) 8 C. W. N. 741.

(3) (1907) 11 C. W. N. 859.

support of this view, reliance was placed upon the decision in *Nikunja Behary v. Radha Kishore* (1). On an examination of the judgment in that case, however, it transpires that the decision is not an authority for the proposition deduced therefrom. There it was held that the particular decision of the Revenue Officer was within his jurisdiction; and if the decision was within his competence, it was plainly final between the parties under sub-section (1) of section 9 of Act III of 1898. We may further observe, with reference to the decision in *Nabin Chandra v. Radha Kishore* (2), that although reliance was placed upon the doctrine of *res judicata*, the court yet proceeded to determine the case on the merits and came to the conclusion that the claimants had failed to establish their alleged rent-free title on the basis of the *sanads* and the other documents produced by them. We hold accordingly that the appellant can succeed, only if the decision of the Settlement Officer dated the 17th April 1897 was a decision of a dispute, which he was competent to decide under section 106 of the Bengal Tenancy Act as it stood before its amendment in 1898.

It cannot, we think, be seriously maintained that the Settlement Officer was competent to decide a question of this character before the amendment of the statute in 1898. This is plainly indicated by the fact that section 102 has now been amended by the insertion of a new clause which expressly authorises the Settlement Officer to decide, when the land is claimed to be held rent-free, whether or not rent is actually paid, and if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority. The very circumstance that the Legislature has

(1) (1903) 22 C. L. J. 148.

(2) (1907) 11 C. W. N. 859.

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inserted this clause in section 102 points to the conclusion that the matter provided for thereunder is not covered by the other clauses of section 102. This, in fact, was the view taken by a Full Bench of this Court in the case of *Secretary of State for India v. Nitye Singh* (1) and is also in accord with the decision in *Dharani Kant Lahiri v. Gaber Ali Khan* (2). But it has been argued that the decision of the Full Bench should be limited to cases where the Settlement Officer is invited to decide whether an alleged rent-free grant constitutes a valid title, and in support of this our attention has been drawn to isolated passages in the judgments delivered by the Full Bench. But we prefer to accept the interpretation of the decision of the Full Bench as given by Mr. Justice Prinsep who delivered the leading judgment in that case; his view will be found in the case of *Radha Kishore v. Durganath* (3), and was confirmed on appeal by a Bench of three Judges. Reference has also been made to the case of *Karmi Khan v. Brojo Nath Das* (4), but that decision, rightly interpreted, does not support the contention of the appellant. In fact, the question whether a lakhiraj is valid or not, does not and cannot require consideration in a case of this description; the proceeding is not by the Government for assessment of revenue on land alleged to be held revenue free, but is by the proprietor of an estate for assessment of rent on land claimed by the occupier to be held as rent-free. It has finally been urged that if this view be taken, it would be open to any occupier of land to defeat the proceeding before the Settlement Officer by an unfounded assertion that the land was held rent-free. There is no ground for this apprehension, for as was pointed out by Mr. Justice Prinsep in *Nikunja*

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(2) (1902) I. L. R. 30 Calc. 339. (4) (1894) I. L. R. 22 Calc. 244, 248.

Behary v. Radha Kishore (1) it is open to the Settlement Officer to investigate whether rent has, as a matter of fact, been paid in respect of the disputed land; if it is proved that rent has been paid, the Settlement Officer is competent to assess fair and equitable rent on the land; if, on the other hand, it is proved that rent has never been paid in respect of the land, he cannot assess rent thereon merely because he is of opinion that the alleged rent-free title has not been proved. This was the law under the Bengal Tenancy Act as it stood before its amendment in 1898. The law, however, was altered in 1898 and the controversy cannot be raised again. We hold accordingly that the decision of the Settlement Officer dated the 17th April 1897 does not operate as *res judicata*, and that it was open to the District Judge to come to a determination of the matter in dispute on the evidence before him. That determination, as we have said, is not, and cannot be successfully assailed on the merits, as it accords with a long line of cases in this Court: *Birendra v. Bhoirab* (2).

The result is that the decree of the District Judge is affirmed and this appeal dismissed with costs.

S. K. B.

Appeal dismissed.

(1) (1903) 22 C. L. J. 148.

(2) (1913) 20 C. L. J. 295.

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