APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

1917

Aug. 22.

SECRETARY OF STATE FOR INDIA

v.

DIGAMBAR NANDA.

Occupancy Raiyat—Settlement, whether of raiyati holding or of tenure—Statutory presumption—Bengal Tenancy Act (VIII of 1885), s. 5, sub-s. (5)—Suit under s. 104 H—Incidents of tenancy.

In a suit under s. 104 H of the Bengal Tenancy Act, the plaintiff sued for a declaration that he was an occupancy raiyat in respect of certain lands. He based his title on two documents: one was an *amalnamah* granted to his predecessor in 1868 which recited that certain mouzahs were settled with the grantee for bringing them under cultivation and directed the grantee to extirpate wild beasts, clear jungles, raise embankments at his own expense, carry on cultivation and enjoy the crops thereof; and the other document, which fixed the rent, was executed in 1869 and recited that on the strength of the aforesaid *amalnamah*, the grantee took possession and had commenced to reclaim jungles, raise embankments and cultivate lands. The grantee was further authorised to make settlements with tenants:

Held, that the settlement was of a raiyati holding and not of a tenure. The *amalnamah* was expressly granted for the purpose of reclamation and cultivation by the grantee, and the regular lease which followed did not indicate any intention to alter the nature of the tenancy.

Held, also, that the mere fact that the tenant had sublet his land did not by itself establish conclusively that his status was that of a tenure-holder and not that of a raiyat. The test to be applied to determine his status was the intention of the contracting parties. Where the terms of the original grant were known, the statutory presumption in s. 5, sub-s. (5) of the Bengal Tenancy Act did not apply; where the origin of the tenancy was unknown, the mode of user of the land might furnish a valuable clue to determine its original purpose, and where it was ambiguous, evidence of subsequent conduct of parties might be admissible.

*Appeal from Original Decree No. 252 of 1913, against the decree of Achinta Nath Mitra, Subordinate Judge of Midnapore, dated March 26, 1913.

Promotho Nath Kumar v. *Nilmani Kumar* (1), *Promoda Nath Roy* v. *Asiruddin Mandal* (2), *Bamapada Roy* v. *Midnapore Zemindary Co.* (3) referred to.

Held, further, that in a suit under s. 104 H of the Bengal Tenancy Act, it was not sufficient for the Court to hold that the entry in the Settlement Roll as to the status or rent was erroneous. The Court must affirmatively determine the exact conditions and incidents of the tenancy as also the rent to be settled on such basis.

APPEAL by the Secretary of State for India in Council, the defendant.

On or about December 1910, one Digambar Nanda, the present respondent, instituted a suit under s. 104H of the Bengal Tenancy Act against the Secretary of State for India in Council, for a declaration that he was the occupancy raiyat in respect of certain lands and for other incidental reliefs. The plaintiff pleaded that he derived his title from an *amalnamah*, dated the 19th June 1869, granted to his father Bhola Nath by one Lal Chand Bhuia. This document recited that the mouzahs mentioned were settled with the grantee for bringing them under cultivation, and specifically directed the grantee to extirpate wild beasts, clear out jungles, raise embankments at his own expense, carry on cultivation and tillage, and enjoy the crops thereof. It further recited that as no rent was settled a *pattah* would be granted at the proper rent in the following year. On the 14th June 1869, the grantor executed a *pattah* which recited that Bhola Nath had taken possession of the land and that he had at his own expense commenced to reclaim jungles and cultivate lands. It was further covenanted that if the grantee did not cultivate the lands fit for cultivation within the term of the lease, he would be liable to compensation for loss that might be sustained by the

(1) (1911) 14 C. L. J. 38; 15 C. W. N. 902.
(2) (1911) 15 C. W. N. 896.
(3) (1912) 16 C. L. J. 322.

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grantor. A settlement was made at a progressive rate of rent for a term of 19 years for carrying on the cultivation. The defendant contended, *inter alia*, that by the aforesaid *amaln mah* no raiyati interest was created in favour of Bhola Nath. On the 26th March 1913, the Court of first instance decreed the suit holding that the plaintiff was not a tenure-holder but an occupancy raiyat and that the existing rent which the plaintiff was liable to pay before the last survey and settlement proceedings was fair and equitable. From that decision the defendant preferred this appeal to the High Court.

Babu Ram Charan Mitra, for the appellant.

Mr. B. Chakravarti, *Babu Shib Chandra Palit*, *Babu Kshirod Narain Bhuia* and *Babu Dhirendra Krishna Roy*, for the respondent.

Cur. adv. vult.

MOOKERJEE AND WALMSLEY JJ. This is an appeal by the Secretary of State for India in Council in a suit instituted by the respondent under section 104H of the Bengal Tenancy Act for declaration that he is an occupancy raiyat in respect of the subject matter of the litigation and for incidental reliefs. The Subordinate Judge has decreed the suit and has held that the plaintiff is not a tenure-holder but an occupancy raiyat and that the existing rent which the plaintiff was liable to pay before the last survey and settlement proceedings was fair and equitable. The substantial question in controversy, consequently, is whether the plaintiff is an occupancy raiyat as he alleges or whether he is a tenure-holder as recorded by the revenue authorities. The root of the title of the plaintiff is an *amalnamah* granted on the 19th June 1868 to his father by Lal Chand Bhuia, the then settlement holder under the Government. This document recites that the mouzahs mentioned were settled

with the grantee for bringing them under cultivation, and it specifically directs the grantee to extirpate wild beasts and, by clearing out jungles and raising embankments at his own expense, to carry on cultivation and tillage and enjoy the crops thereof. The express purpose of the grant consequently was reclamation and cultivation of the leasehold lands by the grantee. No rent was settled at the time, but the *amalnamah* recites that a pattah would be granted at the proper rent in the following year. On the 14th June 1869, the grantor executed a pattah in favour of the grantee. This instrument recites that, on the strength of the *amalnamah*, Bhola Nath Nanda had taken possession of land exceeding two thousand bighas in area and that he had at his own expense commenced to reclaim jungles, to raise embankments and to cultivate the lands. The settlement was made for a term of 19 years for carrying on cultivation at a progressive rate of rent. The document further authorised the grantee to continue to enjoy the profits of the land by bringing them under cultivation either by himself or by making settlement with tenants, and a covenant was inserted to the effect that if the grantee did not cultivate the lands fit for cultivation within the term of the lease, he would be liable to compensation for loss that might be sustained by the grantor. In our opinion, this document leaves no room for doubt that the settlement was of a raiyati holding and not of a tenure. The *amalnamah* was expressly granted for the purpose of reclamation and cultivation by the grantee, and the regular lease which followed did not indicate any intention to alter the nature of the tenancy. Stress has been laid, however, on the circumstance that under the lease the grantee was authorised to cultivate the land, either by himself or by making settlement with tenants. This clause

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obviously does not show conclusively that the tenant was a tenure-holder and not a raiyat. A tenure-holder may settle a raiyat on the land of his tenancy, and, a raiyat also may, in his turn, sublet the land of his holding to an under-raiyat. Consequently, the mere fact that a tenant has sublet his land does not by itself establish conclusively that his status is that of a tenure-holder and not that of a raiyat. The test to be applied to determine the status of a tenant is the intention of the contracting parties. Section 5, sub-section (*1*) of the Bengal Tenancy Act defines a "tenure-holder" to mean primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rent or bringing it under cultivation by establishing tenants on it. Sub-section (*2*) of the section defines a "raiyat" to mean primarily a person who has acquired such a right to hold land for the purpose of cultivating it by himself or by members of his family or by hired servants or with the aid of other persons. Sub-section (*3*) further provides that a person shall not be deemed to be a raiyat unless he holds lands either immediately under a proprietor or immediately under a tenure-holder These definitions show that there may be a tenure-holder directly under a proprietor as there may be a raiyat directly under a proprietor. The test to be applied in each case is furnished by section 5, sub-section (*4*), namely, the purpose for which the right of tenancy was originally acquired. Sub-section (*5*) formulates a rebuttable presumption, namely, that where the area held by the tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shown. There is no room, however, for the application of this statutory presumption when the terms of the original grant are known, as in the case

before us. To ascertain the status of the plaintiff, we must consequently determine the purpose for which the tenancy was originally created; did the grantor intend to carve out the interest of a middleman or did he intend to settle the land with a person who would bring the lands under cultivation. The mere fact that the plaintiff has sublet the land is not decisive; because a tenure-holder, though a middleman who collects rent, may yet cultivate a portion of the land himself, just as much as a raiyat, though himself a cultivator, may settle a portion of the land with under-raiyats. In cases where the origin of the tenancy is unknown, the mode of user of the land may furnish a valuable clue to determine the original purpose of the tenancy, and where the terms of the grant are ambiguous, evidence of conduct subsequent of the parties may also be admissible: *Promotho* v. *Nilmani* (1), *Promoda Nath* v. *Asiruddin* (2), *Bamapada Roy* v. *Midnapore Zemindari Co.* (3). The case before us, however, is free from the difficulty which arises when the terms of the original grant are either unknown or ambiguous. Here the *amalnamah* which sanctioned the entry of the grantee on the land demised and the lease which followed, make it plain beyond controversy that the purpose of the settlement was reclamation and cultivation by the grantor himself. The interest created was consequently that of a raiyat and not that of a tenure-holder. In this view, it is needless to consider the conduct of the parties. But we may observe that the judgment of the Subordinate Judge shows—and his view is amply sustained by the materials on the record—that the Settlement authorities have, from time to time, regarded the plaintiff and his predecessor, not as tenure-holders, but as

(1) (1911) 15 C. W. N. 902; 14 C. L. J. 38.

(2) (1911) 15 C. W. N. 896.

(3) (1912) 16 C. L. J. 322.

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raiyats entitled to a right of occupancy. Stress was laid by the appellant on the decisions in *Secretary of State for India* v. *Jadav Chandra Misra* (1) and *Secretary of State for India* v. *Gobind Prashad Barik and Others* (2). No useful purpose would, however, be served by an analysis of decisions given on entirely different sets of circumstances, and we may usefully recall the emphatic protest of Lord Haldane L. C. in the case of *Kreglinger* v. *New Patagonia Meat Co.* (3) against the abuse of judicial precedents where they are cited, not as authorities for principles enunciated therein, but as guides in the determination of the rights of parties which are dependent on the facts of individual cases and the contractual obligations enforceable between them. We must accordingly confirm the finding of the Subordinate Judge that the plaintiff is a raiyat and not a tenure-holder.

The next question which requires examination is, is the plaintiff an occupancy or non-occupancy raiyat, and what is the fair rent assessable on the lands in suit according to his status? In the Court below, it appears to have been assumed that if the plaintiff was not a tenure-holder as found by the Revenue Authorities, he must be an occupancy raiyat. This, however, does not necessarily follow. Indeed, it has been argued before us that after the creation of the holding, the plaintiff was, for a period an *ijaradar*, and that this circumstance interrupted the growth and perfection of the right of occupancy. This is an aspect of the matter which has not been fully investigated. Besides this, the question of the fair rent payable by the plaintiff must depend upon his precise status, and till that has been determined with accuracy, it is impossible to ascertain the amount of rent to be

(1) (1916) 21 C. W. N 452. (2) (1916) 21 C. W. N 505.
(3) [1914] A. C. 25, 40.

settled. In a suit under section 104H, it is not sufficient for the Court to hold that the entry in the Settlement Rent Roll as to the status or the rent is erroneous. The Court must affirmatively determine the exact conditions and incidents of the tenancy as also the rent to be settled on such basis; this is obvious, as under sub-section (7) the rent settled by the Court is deemed to have been duly settled in place of the rent entered in the Settlement Rent Roll. It is consequently impossible to affirm the decree of the Subordinate Judge, although we hold that his view that the plaintiff is not a tenure-holder is correct.

The result is that this appeal must be allowed and the decree of the Court below set aside. The decree of this Court will declare that the status of the plaintiff is that of a raiyat and the case will be remitted to the Subordinate Judge to determine whether the plaintiff is an occupancy raiyat or non-occupancy raiyat and then to ascertain the fair rent payable by him. The plaintiff will have half his costs both here and in the Court below. The costs after remand will abide the result.

L. R. *Appeal allowed.*