PRIVY COUNCIL.

P.C.*
1919

June 19.

PORT CANNING LAND IMPROVEMENT CORPORATION

v.

KATYANI DEBI.

[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

Landlord and Tenant—Permanent, heritable and transferable tenure—Liability to enhancement—Contract for rent at progressive rates—Inference when highest rate is reached and there is no further enhancement by law—Bengal Tenancy Act (VIII of 1885), ss. 29, 30.

The defendant in this case was the tenant of the plaintiffs (appellants) and the tenure was admittedly permanent, heritable and transferable. The only question was whether the rent was fixed as the defendant alleged, or was liable to enhancement. Ordinarily the admitted characteristics would create a presumption in favour of the tenant, and throw on the plaintiffs the onus of showing that the tenure was wanting in the characteristic of fixity of rent, but

Held, that even if the onus lay on the defendant she had fully discharged it. In the books of the plaintiff Company it was expressly stated that the tenure should not be liable to rent for the first four years. After that it carried rent on a progressive scale until in 1298 it reached one rupee one anna per bigha. The contract as to progressive rent thus came to an end in 1298, and there was no further enhancement by operation of law. The clear inference from those facts was that the maximum rent reached in 1298 was the fixed rent of the tenure as long as it lasted.

Golam Ally v. *Gopal Lall Thakoor* : s. c. in Privy Council *Soorasoondery Dabee* v. *Golam Ally* (1), *Dhunput Singh* v. *Gooman Singh* (2), and *Huro Prasad Roy Chowdhry* v. *Chundee Churn Boyragee* (3) referred to.

Appeal 114 of 1917 from a judgment and decree (9th March, 1914) of the High Court at Calcutta, which

* *Present :* Viscount Cave, Lord Phillimore, Sir John Edge and Mr. Ameer Ali.

(1) (1873) 15 B. L. R 125n.; (1868) 9 Suth. W. R. 65.
(2) (1867) 11 Moo. I. A. 435, 465.
(3) (1883) I. L. R. 9 Calc. 505.

reversed an order (14th August, 1912) of the District Judge of the 24-Pergunnahs, and affirmed an order (18th September, 1911) of the Court of the Subordinate Judge of Alipur.

The plaintiffs were the appellants to His Majesty in Council.

The appellants are the proprietors of a zamindari in the 24-Pergunnahs known as 29 Nalgora Abad. The respondent held under the appellants a portion of the zamindari, and the matter in dispute in this appeal was as to the terms and conditions of the respondent's tenure.

The facts will be found sufficiently stated in the judgment of the Judicial Committee.

In March, 1885, the predecessors-in-title of the respondents obtained, through one Edulji Cowasji, the agent of the appellant, a lease or settlement of 1,000 bighas out of the zamindari, which 1,000 bighas was subsequently divided into five shares of which the respondent's jumma is one.

This share was originally described as being 193 bighas, 12 katas and 14 chittacks, and at the time of the suit, and for some years previously, the respondent had paid rent on that area at the rate of 1 rupee, 1 anna per bigha.

It has been found and is admitted that the real area of the land is 210 bighas 12 katas, and that rent is payable on that amount.

In their suit the appellants claimed a declaration that the rent payable by the respondent was liable to enhancement.

The main defence of the respondent was that the settlement by Cowasji was a permanent mourasi mokurari one and therefore not liable to enhancement, and that the appellants by their subsequent conduct were estopped from disputing that fact.

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The document given to the respondent by Cowasji was neither stamped nor registered, and was objected to by the appellant before the Subordinate Judge who tried the suit. But the Trial Judge admitted the document (Ex. *b*) on the ground that it was not in itself a lease or agreement to lease, but only a record of a prior verbal arrangement under which the land had been leased. But he held on the evidence that the rent was not liable to enhancement; and gave the appellants a decree for rent, but only at the rate of 1 rupee, 1 anna a bigha.

On appeal the District Judge held that the pattah being unregistered could not be admitted in evidence; that there was nothing in the conduct of the appellants to prevent their enhancing the rent, and that it was liable to be enhanced.

The High Court on appeal held that the document (Ex. *b*) being merely a memorandum of a prior verbal arrangement and not a lease or agreement to lease, was admissible in evidence. The High Court therefore reversed the decree of the District Judge and restored that of the Subordinate Judge.

On this appeal,

De Gruyther, *K.C.*, and *E. U. Eddis*, for the appellants, contended that the High Court erred in holding that the terms of the entry in the appellants' book produced by them (Ex. 20) showed that the rent of the tenure was not liable to enhancement. No such memorandum of lease as that produced by the respondent could be made except by a written and registered document. The High Court also erred in holding that the grant of such a lease, as the respondent relied on, was within the apparent scope of Cowasji's authority in face of the express terms of the power of attorney; and the High Court should have

held that Cowasji had no authority to grant such a lease. The inference had been wrongly drawn by the High Court from the cases of *Soorasoondery Dabee* v. *Golam Ally* (1) and *Huro Prasad Roy* v. *Chundee Churn Boyragee* (2) that the maximum amount of a progressive series of rents was necessarily a fixed rent for the tenure in future. Those cases laid down no definite principle, and were, moreover, distinguishable from the present case which must be determined by its own circumstances and on the terms of the documentary evidence in it: reference was made to *Dhunput Singh* v. *Gooman Singh* (3), and the Bengal Tenancy Act (VIII of 1885), sections 29 and 30. There was no ratification by the appellants of the grant by Cowasji of a mokurari lease.

Sir William Garth, for the respondent, contended that on the proper construction of the memorandum it was neither a lease nor an agreement for a lease, and was admissible in evidence; and having regard to the course taken by the appellants in the lower Courts, no question of its admissibility should have been entertained in the High Court. The arrangement referred to in the memorandum and corroborated by the entry in the appellants' own books was shown to be a perpetual lease at a fixed rate of rent: and from the terms of the documents and the cases cited on the subject, the High Court rightly assumed that the highest rent in the progressive series of rents settled was a fixed rent, and not liable to be enhanced; and for 17 years the appellants had not sought to enhance it. On the evidence Cowasji had authority to grant a mourasi mokurari lease, and such leases were within the apparent scope of his authority; and the appellants

(1) (1873) 15 B. L. R. 125 (note). (2) (1883) I. L. R. 9 Calc. 505.
(3) (1867) 11 Moo. I. A. 435, 465.

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ratified the action of Cowasji in reference to the memorandum in suit.

De Gruyther, *K.C.*, replied.

The judgment of their Lordships was delivered by MR. AMEER ALI. This appeal arises out of a suit brought by the plaintiff Company in the Court of the First Subordinate Judge of the 24-Pergunnahs in Bengal for the enhancement of the rent of a tenure held under them by the respondent. The Subordinate Judge dismissed the suit, holding that the rent of the tenure was not enhancible; his judgment was reversed on appeal by the District Judge. On second appeal the High Court of Calcutta came to the conclusion as an inference of law on the documentary evidence and the conduct of the parties, that the view taken by the Subordinate Judge was well founded, and it accordingly set aside the District Judge's order and restored that of the first Court dismissing the suit.

The plaintiff Company, a Syndicate, was formed in Bombay with the object of acquiring from Government grants of land in the Sunderbun jungle tract and reclaiming the same. The procedure that was adopted for the purpose was to carve out the land granted to them by Government into a number of subordinate tenures, to the holders of which was entrusted the actual work of reclamation and the settlement of ryots on land so reclaimed. It would appear from the record that the Syndicate ordinarily gave some pecuniary assistance towards the reclamation, but in the instance in dispute they waived the payment by the tenure-holders of the usual premium or *salami* on account of the heavy cost of the work.

The plaintiff Company, it is admitted, carried on their work in the Sunderbun tract through an agent named Edulji Cowasji, who was in their service for

a number of years prior to 1885, and continued in that capacity until 1893. The power of attorney given to him, which bears date the 20th October, 1876, is of the usual character. It gives him, naturally under the circumstances, very wide powers. In exercise of his authority he granted to a number of people collectively, called Teacher & Co., a tenure consisting of 1,000 bighas of land, roughly 333 acres, which subsequently was split up into three lots, one of which, consisting of 193 bighas, is now held by the defendant respondent in the present appeal. The plaintiffs admit that the tenure was *mourusi*, but they allege that though permanent and heritable, it did not carry with it the incident of fixity of rent as alleged by the respondent. The plaintiff Company further alleged that the counterpart of the lease granted to the tenure-holders was lost.

In support of her contention that the tenure then created was non-enhancible, the defendant produced a memorandum executed by Edulji Cowasji, which she alleged set out the terms of the contract. To the reception in evidence of this memorandum the plaintiff Company objected, contending that, as it was unregistered, it was inadmissible under sections 17 and 49 of the Indian Registration Act.

The Subordinate Judge overruled the objection holding that it was neither a lease nor an agreement for a lease, but only a memorandum relating to a previous and completed transaction by which the tenure-holders had obtained possession of the lands. The learned Judges of the High Court take the same view. Their Lordships are unable to concur with the judgment of the High Court on this point in face of the admission by Ramtrahi Chakravarti, one of the tenure-holders, that he got into possession under the memorandum, which he regards as his lease.

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Being unregistered, it is inadmissible in evidence, and no effect can be given to it: but the respondent relied also in support of her case on an entry in the settlement books of the plaintiff Company, which is in these terms:—

"Rent free from 1291 to 94 B.S.
"4 Annas in 1295.
"8 Annas in 1296.
"12 Annas in 1297.
"17 Annas in 1298."

The District Judge does not appear to have given much attention to this document, but the Subordinate Judge and the High Court both attach to it, and rightly, in their Lordships' opinion, great importance in judging of the character of the tenancy which Edulji Cowasji, acting as the Company's agent, created in 1885. The document is found in the books of the plaintiff Company, and if it is open to the construction for which the respondent contends, taken in conjunction with other circumstances, their Lordships can arrive only at one conclusion, that the claim of the plaintiff Company must fail.

Before proceeding further their Lordships desire to observe that the plaintiff Company in 1895 put up the tenure in question to sale for arrears of rent. They admit that it is heritable (*mourusi*), and by their conduct in trying to bring it to sale, they admitted it to be transferable; in other words, that it is a permanent, heritable and transferable tenure. The only question is whether the rent is fixed, as the defendant alleges, or is liable to enhancement from time to time under the provisions of the Tenancy Act. Ordinarily the two admitted characteristics would create a presumption in favour of the tenant, and throw on the plaintiff the onus of showing that the tenure is wanting in the characteristic of fixity of

rent. But assuming that the onus lay on the defendant, their Lordships are of opinion that she has fully discharged it. In the books of the plaintiff Company it is expressly stated that the tenure should not be liable to rent for the first four years. After that it is to carry rent on a progressive scale until in 1298 it reached one rupee one anna. The contract as to progressive rise thus came to an end in 1298, and there is no reference to further enhancement by operation of law. In their Lordships' opinion the clear inference from these facts is that the maximum rent reached in 1298 was the fixed rent of the tenure so long as it lasted. This form of agreement, in the case of reclamation leases, has formed the subject of decision in three cases. In the case of *Golam Ally* v. *Gopal Lal Thakoor* (1), Mr. Justice Phear observed as follows :—

"I am led to this [conclusion] in great degree by consideration of the fact that the parties to the contract have carefully provided for a variation of the rent up to a maximum of Rs. 5 per kanee, and have yet been entirely silent as to any possibility of variation beyond that amount, and also that they have minutely prescribed the mode in which the excess lands within the given boundaries are to be assessed at rates rising up to the same amount, Rs. 5, but at the same time have made no allusion to any other ground for the enhancement of the jumma to be paid for the land lease."

This case came up on appeal before the Judicial Committee, and their Lordships agreed with the High Court that the terms of the agreement carried fixity of rent. The words used by the Board in giving their decision on the point are important: *Soorasoondery Dabee* v. *Golam Ally* (2). Their Lordships observed :—

"The *kabuliat* did not contain the term mukarrari or the words 'from generation to generation,' and the *kabuliat* was one of modern date, and there was not as in *Dhunput Singh's Case* (3) any long uninterrupted enjoyment at a fixed, unvarying rent. It was, however, admitted by both parties in argument that the tenure was a permanent one. It is unnecessary

(1) (1868) 9 Suth. W. R. 65. (2) (1873) 15 B. L. R. 125 (note).
(3) (1867) 11 Moo. I. A. 435, 465.

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for their Lordships to express any opinion on that point, and they therefore abstain from doing so. Looking at the words of the *kabuliat*, their Lordships are of opinion that it was the intention of the parties that in and after the year 1264 the defendant should hold at the fixed rate of Rs. 5 per kanee, and that consequently the rent was not liable to enhancement beyond that rate."

In *Huro Prasad Roy Chowdhry* v. *Chundee Churn Boyragee* (1), Mr. Justice Wilson, afterwards Sir Arthur Wilson, (sitting with Mr. Justice McLean), dealing with the construction of an agreement of a similar character, expressed himself as follows:—

"Now the question is shortly this. When land is let for the purpose of clearing jungle or other reclamation and on this ground or any other ground mentioned in the lease a reduced rent is provided for the first few years and it is said that the rent is to be at such and such rate, a sum as the full rent, does that mean, as the words seem to import, that the full rent is to be the full rent as long as the tenure subsists, or is such a rent liable to enhancement under the provisions of the rent law. We agree with the lower Appellate Court in thinking that the decision of the Privy Council in *Soorasoondery Dabee* v. *Golam Ally* (2) is an authority for holding that the former view is the true one, and that in the present case the rent cannot be enhanced."

Counsel for the plaintiffs were asked if they knew of any case in which a contrary view had been taken, and they frankly admitted that they had found none. Nor are their Lordships aware of any.

The conduct of the plaintiff Company supports the respondent's case. There can be little doubt that the plaintiff Company must have been fully aware of their agent's transactions; not only is there a presumption that he must have faithfully carried out his duties and kept them informed of his dealings with the tenures, but there are the outstanding facts that they received an unvarying rent for nearly seventeen years; that when the original tenure was split up, they confirmed to two of the grantees two of the plots at the fixed rent reached in 1298, and that they allowed

(1) (1883) I. L. R. 9 Calc. 505. (2) (1873) 15 B. L. R. 125 (note).

the defendant to raise permanent structures on the tenure and to materially alter its agricultural character, although they must have known of her acts, as they had admittedly a branch office at Mutla not far from where the lands lay.

On the whole their Lordships are of opinion that the judgment of the High Court is correct, and that this appeal should be dismissed with costs.

Their Lordships will humbly advise His Majesty accordingly.

J. V. W.

Appeal dismissed.

Solicitors for the appellant: *Sanderson, Adkin, Lee & Eddis.*

Solicitors for the respondent: *T. L. Wilson & Co.*