PRIVY COUNCIL.

P.C.*
1925
July 7.

BHUPENDRA NARAYAN SINGH (DEFENDANT)

v.

NARAPAT SINGH (PLAINTIFF)

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Chaukidari Chakaran Lands—Resumption and transfer to zamindar—Patni settlement—Rights of patnidar—Rent—Ben. Act VI of 1870, s. 50.

When chaukidari chakaran lands included in a patni settlement have been resumed and transferred to the zamindar under Ben. Act VI of 1870 he is entitled to the payment of a fair and equitable rent in respect thereof; the fixing of the rent is a condition to the patnidar being put into possession.

Pryambada Debi v. *Monahar Mukhopadhya* (1) approved.

Ranjit Singh v. *Kali Dasi Debi* (2), and *Ranjit Singh* v. *Maharaj Bahadur Singh* (3), discussed and distinguished.

Judgment of the High Court reversed.

CONSOLIDATED appeal (No. 170 of 1924) by special leave from a judgment and 18 decrees of the High Court (February 27, 1922) partly affirming and partly reversing decrees of the District Judge of Birbhum (September 13, 1919) which affirmed decrees of the Munsif of Rampurhat.

The appeal related to the rights of a zamindar (the appellant) and patnidars and darpatnidars (represented by the respondent) in respect of chaukidari chakaran lands which in 1899 had been resumed and transferred to the zamindar under Ben. Act VI of 1870.

(1) (1924) 29 C. W. N. 328.
(2) (1917) I. L. R. 44 Calc. 84; L. R. 44 I. A. 117.
(3) (1918) I. L. R. 46 Calc. 173; L. R. 45 I. A. 182.

* *Present:* LORD PHILLIMORE, LORD CARSON AND SIR JOHN EDGE.

The patni lease which was granted in 1853, was in the following terms:—

"I settle unto you the said mahals at a yearly jama of Rs. 4,589 in Company's coin, excluding charges for saranjami (collection), for debsheba, for embankments and for erecting culverts and for paying the salaries of postal peons, etc., which you are to pay, and from the said mahal are to be excluded the jirati chakaran lands held by the officers of the cutchery of the pargana and other mahals and the lands under jhanda jama, which are included in these mahals, and also the gifts and brahmottars in existence from time previous and granted to you by the predeceased zamindar and by myself, and inclusive of the lands under jhanda jama and the jirati chakaran lands held by the officers of the said mahals which from the time previous have appertained to other mahals, you shall freely, by admitting the said jama, and by executing doul kabuliyat and kistabandi papers, etc., in my favour, and by filing them in my zamindari office, and by making payment of the total jama aforesaid, year after year, month after month and kist after Kist as per kistabandi noted below at my sudder cutchery, continue to possess and enjoy, down to your sons and grandsons, etc."

The High Court held that the patnidars were entitled to khas possession of the chaukidari chakaran lands, but that the zamindar was entitled to an additional rent.

The grounds of the decision appear from the judgment of the Judicial Committee.

The patnidars relied, *inter alia*, upon s. 51 of Ben. Act VI of 1870 which provides:—

"51. Such order shall operate to transfer to such zamindar the land therein mentioned subject to the amount of assessment therein mentioned, and subject

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to all contracts theretofore made, in respect of, under, or by virtue of, which any person other than the zamindar may have any right to any land, portion of his estate, or tenure, in the place in which such land may be situate."

Sir George Lowndes, K. C., and *Dube*, for the appellant. The judgments of the Board in *Ranjit Singh* v. *Kali Dasi Debi* (1) and *Ranjit Singh* v. *Maharaj Bahadur Singh* (2), do not, as the Appellate Court considered, adversely affect the earlier decisions in Calcutta: *e.g.*, *Hari Narain Mozumdar* v. *Mukund Lal Mondal* (3), *Gopendra Chandra Mitter* v. *Taraprasanna Mukerjee* (4).

Those cases were rightly decided. The judgment of the High Court in the present case was considered by another Bench in *Pryambada Debi* v. *Monahar Mukhopadhya* (5) and was not followed.

DeGruyther, K. C., and *Hodge*, for the respondent. The lands were included in the patni settlement, and the patnidar was entitled to khas possession. Having regard to s. 51 of Ben. Act VI of 1870 no additional rent was payable. There was no jurisdiction under that Act, or otherwise, to estimate or impose a further rent. The rent reserved by the patni in respect of the lands, including the chaukidari chakaran lands was an entire rent attributable as much to one part as to any other part of demised land. The decisions of the High Court relied on are not consistent with the recent decisions of the Board.

(1) (1917) I. L. R. 44 Calc. 84 ; L. R. 44 I. A. 117.

(2) (1918) I. L. R. 46 Calc. 173 ; L. R. 45. I. A. 162.

(3) (1900) 4 C. W. N. 814.

(4) (1910) I. L. R. 37 Calc. 598.

(5) (1924) 29 C. W. N. 328.

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The judgment of their Lordships was delivered by

LORD CARSON. This is a consolidated appeal by special leave from one judgment and 18 decrees dated the 27th February 1922, of the High Court of Judicature at Fort William in Bengal. Each of the 18 decrees though relating to a distinct subject matter, raises the same question for decision. Each suit was a suit to recover possession from the defendant (who is the present appellant) the zamindar of certain villages in patni settlement of chaukidari chakaran lands which had been resumed by the Government under the provisions of Bengal Act VI of 1870, and were transferred to the zamindar subject to the payment of rent assessed on the lands in accordance with section 51 of the Act. The plaintiffs (respondents) alleged that by a pottah dated 13th November, 1853, the predecessors in title of the appellant zamindar granted five villages in patni settlement at the annual rent of Rs. 4,589, to one Krishna Chandra, from whom the plaintiffs derived title. It was further alleged by the plaintiffs and it is not now in dispute that at the time of the patni settlement there were certain lands in every village which were chaukidari chakaran lands, and were held and enjoyed by the chaukidars in lieu of their salaries, and that such lands which had been transferred as aforesaid by the collector form part of the lands of the patnidar under the said pottah of 13th November 1853. The appellant, on the other hand, denied that under the terms of the said pottah the plaintiffs had any title to the chaukidari chakaran lands released by the Government, and that in any event the plaintiffs were not entitled to get possession thereof without paying some rent in addition to the annual rent of Rs. 4,589 fixed in the pottah.

All the suits were tried by the Munsif of Rampurhat, who by his judgment dated 30th September 1910,

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held that the disputed property was included in patni settlement, and that the plaintiffs were entitled to obtain khas or actual possession of the lands in suit, but that they could not do so without paying an additional rent to the zamindar, and he concluded his judgment in the following terms:—

"The plaintiffs' patni lease appears to cover all the lands within the boundaries of the mahals, but the profit of the chaukidari lands were not taken into account in determining the rent payable by the patnidar. The plaintiffs must be held to pay a higher amount for the resumed lands than that which has been assessed for chaukidari purposes on these lands by the collector as by the resumption the lands were enfranchised and the patnidars would get the land free from the burden of the public service. The principle has been laid down in 4 Calcutta Weekly Notes, page 814, 'the patnidar is bound to pay to the zamindar such a rent for these lands as corresponds to the proportion between the gross collection and the patni rent formerly payable by him.'"

On an appeal and cross-appeal to the District Judge of Birbhum the decree and order of the Munsif was by a judgment of 13th September 1919, affirmed. The plaintiff, now respondent, appealed to the High Court of Judicature against so much of the order a adjudged that the plaintiff should pay to the defendant No. 1 such increased patni rent over the doul jama as may be proportionate to the increase of the present collection over what it had been at the time at which the patni mahal was created. The learned Judges of the High Court allowed the appeals of the plaintiff and made decrees setting aside that part of the decision of the District Judge which declared the zamindar entitled to obtain additional rents from the plaintiff, and the only question to be considered on the present appeal by the appellant zamindar against the said order is as to whether such increased rent is or is not payable. It has not been disputed, and indeed it was so stated by the judgment of the High Court that by a long series of decisions the zamindar's

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right to a share of the rents and profits in addition to the amount payable to the chaukidari fund under the provisions of Act VI of 1870 was established :—

"These decisions," say the learned Judges, "have recently been considered and followed in the case of *Maharaja Bejoy Chand* v. *Krishna* (1) which was decided in December 1920, and no useful purpose would we think be served by going through them again. They undoubtedly do support the contention urged before us on behalf of the zamindar respondent and it is useless to suggest that they are in the main distinguishable from the cases before us."

The learned Judges, however, held that the series of decisions laying down this principle could no longer be supported having regard to the decisions of this Board in two cases, viz.: (*1*) ***Raja Ranjit Singh*** v. ***Kali Dasi Debi*** (2) and (*2*) ***Ranjit Singh*** v. ***Maharaj Bahadur Singh*** (3). Their Lordships cannot agree with the Appellate Court that either of the cases referred to has the effect attributed to it by the learned Judges. In the first of these cases where it is to be observed the order was in substantially the same form as in the present case, all that this Board decided was that a patni grant by a zamindar of his interest in lands includes his interest in chaukidari chakaran lands within the boundaries of the grant, and that upon their being resumed and transferred to the zamindar under Bengal Act VI of 1870 the patnidar or darpatnidar holding from him is entitled under section 51 of that Act to possession. The patnidar did not in that case challenge the validity of so much of the order appealed from as rendered the decrees for possession subject to the fixing of a fair and reasonable assessment. In giving the judgment of the Board, Lord Parker of Waddington added: "It is a satisfaction to find that the view above expressed is

(1) (1920) 34 C. L. J. 275.

(2) (1917) L. R. 44 I. A. 117 ; I. L. R. 44 Calc. 84.

(3) (1918) L. R. 45 I. A. 162 ; I. L. R. 46 Calc 173.

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that hitherto universally adopted in the Indian Courts."

In the second of the abovementioned cases referred to by the Judges of the Appellate Court, the only point decided was that upon the transfer of chaukidari chakaran lands situated within the villages to the zamindar an action by the patnidars for declarations that such lands formed parcel of the patni mahal, and that they were entitled to a settlement and khas posession was not an action for specific performance of contract within Art. 113 of Schedule II of the Indian Limitation Act, 1877, but a suit for possession of immovable property within Art. 114. Their Lordships can find nothing in the judgment in anywise affecting the point raised upon the present appeal. The Board has examined the record in that case, and it is to be observed that the order appealed from as in the former case, recognised the right of the zamindar to have a rent fixed for the chaukidari chakaran lands in question, and this part of the order was not questioned or appealed from in the case before the Board, and the judgment appealed from was in their Lordships' opinion correct.

In a case decided by the High Court of Calcutta in 1924, *Pryambada Debi* v. *Monahar Mukhopadhya* (1) the learned Judges refused to follow the decision appealed from in the present case, holding that the Appellate Court had misread or had not appreciated the two judgments of the Privy Council on which they had based their decisions. Their Lordships agree with this view, and are of opinion that the Court below was in error in holding that the cases referred to before the Privy Council made any change in the law as to the right of the zamindar to have a rent fixed

(1) (1924) 29 C. W. N. 328.

under the circumstances existing in the present case.

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It was, however, argued in the present case before the Board that under s. 51 of Act VI of 1870, the patnidar is entitled to hold the lands rent-free, or without paying additional rent for them, Their Lordships cannot accept this view. The peculiar character of chaukidari chakaran lands, and how they came to be included, without paying rent, in the various patni pottahs, as is found in the present case, has been frequently discussed before the Board, as in the cases referred to and others, and as Lord Buckmaster says in *Ranjit Singh* v. *Maharaj Bahadur Singh* (1).

"It does not follow that because the rights originally arose by virtue of a grant declared to be a contract within the meaning of s. 51 they are therefore rights, contractual in the sense that the contract by its terms creates and regulates the personal obligations and duties of the grantor in the circumstances that have arisen. At the time when the patni grants were made the resumption of the chaukidari chakran lands was not even contemplated, and the grant necessarily contains no reference whatever to the circumstances that would arise and the relationships that would exist in the event of the Government resuming possession."

Their Lordships, therefore, see no reason for interfering with the long series of authorities commencing as far back as the year 1900, which have established the right of the zamindar to have an additional rent fixed for such lands, nor can their Lordships overlook the fact that in the cases already referred to before this Board no exception was taken by the patnidar to the fixing of such rents as a condition of being put into possession.

Their Lordships are therefore of opinion that this appeal should be allowed, that the decrees appealed from should be set aside, except so far as they confirm the decrees of the lower Appellate Court, and that such

(1) (1918) L. R. 45 I. A. 162, 166 ; I. L. R. 46 Calc. 173, 188.

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last mentioned decrees should be restored. The respondent should pay the costs of this appeal and of the appeals in the High Court. Their Lordships will humbly advise His Majesty accordingly.

Solicitors for the appellant: *W. W. Box & Co.*

Solicitors for the respondent: *Gush, Phillips, Walters & Williams.*

A. M. T.

FULL BENCH.

Before Walmsley, C. C. Ghose, Suhrawardy, B. B. Ghose and Duval JJ.

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June 15.

BIDYADHAR BACHAR

v.

MANINDRA NATH DAS.*

Jurisdiction—Mesne Profits—Application to assess mesne profits pendente lite *where amount is beyond the pecuniary limits of the Court trying the suit for possession, where to lie—Limitation—Civil Procedure Code (Act V of 1908), ss. 6, 15, O. XX, r. 12, Bengal, Assam and Agra Civil Courts Act (XII of 1887), ss. 19, 21—Suits Valuation Act (VII of 1887), s. 3 (1)—Court Fees Act (VII of 1870), s. 7.*

Held (WALMSLEY J. *dissentiente*), that where a suit is brought in the Court of a Munsif for recovery of possession of land and mesne profits *pendente lite* are claimed or assessed at a sum beyond the pecuniary jurisdiction of the Munsif, it is the Munsif who has jurisdiction to fix such mesne profits and pass a decree for the same, though the amount of mesne profits be beyond his pecuniary jurisdiction.

Held by WALMSLEY J. that the Munsif's jurisdiction in dealing with an application for the ascertainment of mesne profits *pendente lite* remains subject to the pecuniary limitations contained in section 19 of Act XII of 1887 and the presentation of the plaint, so far as it relates to the ascertainment of *mesne profits* in the Court of the Subordinate Judge amounts to the institution of a fresh suit which is affected by the law of limitation.

* Full Bench Reference No. 2 of 1924, in Miscellaneous Appeals Nos. 199 and 269 of 1923.