LETTERS PATENT APPEAL.

Before Mukerji and Mitter JJ.

KANAKKANTI RAY

v.

KRIPANATH GAIN.*

1930
Aug. 11, 21.

Occupancy raiyat—*Tenancy, inception of—Village, declaration of—Bengal Tenancy Amendment Act (Beng. I of 1925)—Bengal Tenancy Act (VIII of 1885), s. 20, sub-s. (1A).*

Sub-section (*1A*), introduced by Bengal Act I of 1925, is not intended to control the section as it stood even before the sub-section was introduced.

A tenant acquired the status of a settled *raiyat* on twelve years' continuous occupation since 1896 or 1897, *i.e.*, since the inception of the tenancy, though the area was declared a village much later, *i.e.*, in 1912.

But it was not possible for him to take up this plea in 1922, when his landlord's action in ejectment was commenced, the legislature not having expressed any clear intention that the sub-section was declaratory of the law prior to the date, when the sub-section came into force or to vary the relative rights of the parties notwithstanding that an action had been commenced on the basis of such rights.

In general, when the law is altered during the pendency of an action, the rights of the parties are to be decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

Maniruddin Mandal v. *Charu Sila Dassi* (1) and *Maheshchandra Land Reclamation and Agricultural Improvement Company* v. *Kajimuddi Sikdar* (2) distinguished.

LETTERS PATENT APPEAL by the plaintiff.

The facts of the case, out of which this appeal arose, appear fully in the judgment under report herein.

Brajalal Chakravarti and *Pramodekumar Ghosh* for the appellant.

Nasim Ali for the respondent.

Cur. adv. vult.

* Letters Patent Appeal, No. 17 of 1930, in Appeal from Appellate Decree, No. 1626 of 1928.

(1) (1928) 48 C. L. J. 386.

(2) (1927) S. A. 347 of 1925, decided by B. B. Ghose and Roy JJ. on 14th July.

1930

Kanakkanti Ray v. Kripanath Gain.

MUKERJI AND MITTER JJ. This appeal arises out of a suit for enhancement of rent based on an agreement served under section 46 of the Bengal Tenancy Act and for ejectment on the ground of refusal to pay the enhanced rent. The suit was instituted in 1922. On a previous occasion when the suit came up on Second Appeal before this Court, it was remitted to the lower appellate court to determine the question of service of notice and other questions that might arise. The order of the remand was made in 1927. The Subordinate Judge, on remand, made a decree in plaintiff's favour. The defendant then appealed to this Court, and the said appeal, being heard by our learned brother, S. K. Ghose J., that decree has been reversed. From his decision, the present appeal has been preferred under the Letters Patent.

One of the questions mooted before the Subordinate Judge, who heard the appeal on remand, was whether, in view of section 20, sub-section (*1A*) introduced by Bengal Act I of 1925, the defendant had not acquired the status of an occupancy *raiyat* so as to defeat the plaintiff's claim. This question was answered by the Subordinate Judge in the negative, but our learned brother, S. K. Ghose J., has taken a contrary view. This is the only question for our consideration in this appeal.

It was argued on behalf of the appellant that, as the question was not raised before this Court on the previous occasion, when this Court remanded the case, though Bengal Act I of 1925 had then come into force, the respondent was precluded from raising it afterwards. We are not prepared to accede to this contention; the order of remand left it open to the Subordinate Judge to deal with all questions that might arise in the suit, and, if in support of his defence, that he was an occupany *raiyat*, the defendant put forward an additional and new reason based on sub-section (*1A*) of section 20, which was then the law, the Subordinate Judge was right in considering it.

The tenancy in this case originated in 1896 or 1897. The area in which the land is situate was not declared to be a village until February 1912. The suit was instituted in 1922. The position, therefore, is that the defendant held the land continuously for nearly 16 years before 1912 and for about 10 years after 1912. At the date, when the suit was instituted, the sub-section had not been introduced, and the law that would have applied to the case was what was enunciated in the case of *Janabali Molla* v. *The Port Canning and Land Improvement Company, Ltd.* (1). Now sub-section (*1A*) to section 20 was introduced by Bengal Act I of 1925 in order to counteract the effect of the decision in the aforesaid case. And the question is to what extent did it do so.

This sub-section declared that, in construing section 20, "a person shall be deemed * * * to have "continuously held land in a village, notwithstand-"ing that such village was defined, surveyed and "recorded as, or declared to constitute a village at a "date subsequent to the commencement of the said "period of twelve years." The general rule as to the retrospective effect of a statute has been concisely stated by Lindley L. J. in *Lauri* v. *Renad* (2): "It "is a fundamental rule of English law that no statute "shall be construed so as to have a retrospective "operation unless its language is such as plainly to "require such a construction; and the same rule "involves another and subordinate rule to the effect "that a statute is not to be construed so as to have a "greater retrospective operation than its language "renders necessary." Now, it is plain, upon a reading of the sub-section, that it is an *ex post facto* law and, like all *ex post facto* legislation, is retrospective in the sense that it created for a person, who was not a settled *raiyat* under the law as it stood before, the status of a settled *raiyat*, and, on the other hand, took away such vested rights of the landlord, as he may have had, on the ground of that person not having

(1) (1923) 40 C. L. J. 167. (2) [1892] 3 Ch. 402, 421.

1930

Kanakkanti Ray v. *Kripanath Gain.*

been a settled *raiyat*. In that way, no doubt, the sub-section was retrospective in its effect. But the other question at once arises and that is to what extent is its retrospective operation rendered necessary by its language. In other words, is it necessary to interpret the sub-section as indicating that the sub-section was intended to control the section as it stood even before the sub-section was introduced? There are, in our opinion, no words in the Act, by which the sub-section was enacted, which may be construed as indicating such an intention. It is well-settled that "in general, when the law is altered "during the pendency of an action, the rights of the "parties are decided according to the law as it existed "when the action was begun, unless the new statute "shows a clear intention to vary such rights" (Maxwell, 7th Edition, p. 192). In the present case no such intention appears.

The result is that we agree with our learned brother S. K. Ghose J. in so far as he has held :—"If "it is held that the amendment of 1925 did not affect "the position in favour of the defendant, then the "whole object of the amendment would be lost. It "would be meaningless to say that, in the case of the "present defendant, his occupancy right is to accrue "from after the date of the amendment, that is, in "1925." We agree that the defendant acquired the status of a settled *raiyat* on twelve years' continuous occupation since 1896 or 1897, that is to say, since the inception of the tenancy, though the area was declared a village much later, *i.e.*, in 1912. But we hold that it was not possible for the defendant to take up this plea in 1922, when the action was commenced, and that the law, as it stood at that date and as explained in the case of *Janabali Molla* v. *The Port Canning and Land Improvement Company, Ltd.* (1), must decide the rights of the parties to the suit, the legislature not having expressed any clear intention that the sub-section was declaratory of the law prior to the date when the sub-section came into force or

(1) (1923) 40 C. L. J. 167.

to vary their relative rights notwithstanding that an action had been commenced on the basis of such rights.

Two decisions of this Court have been referred to in the judgment under appeal. One is the case of *Maniruddin Mandal* v. *Charu Sila Dassi* (1), and the other an unreported case, *The Maheshchandra Land Reclamation and Agricultural Improvement Company* v. *Kajimuddi Sikdar* (2). In the former case there was no appearance on behalf of the respondent and the decision was an *ex parte* one; and in neither of the two cases was any question raised or argued or expressly decided as to whether the new law should govern a pending suit. We, accordingly, do not feel pressed by the authority of these decisions.

The appeal is, accordingly, allowed and the decision under appeal being set aside, that of the Subordinate Judge is restored with costs in this Court and the court below.

Appeal allowed.

G. S.

(1) (1928) 48 C. L. J. 386.

(2) (1927) S. A. 347 of 1925, decided by B. B. Ghose and Roy JJ. on 14th July.