PRIVY COUNCIL.

MIDNAPUR ZEMINDARI COMPANY, LIMITED

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.

P. C.*
1929
June 20, 24, 25, 27; *July* 29.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA].

Record-of-Rights—Entry as tenure-holder—Claim to be occupancy raiyat—*Limitation—Jurisdiction in Second Appeal—Settlement-record under Reg. VII of 1822—Evidence as to nature of holding—Bengal Tenancy Act (VIII of 1885), ss. 104H, 111A—Code of Civil Procedure (Act V of 1908), ss. 100, 101—Indian Limitation Act (IX of 1908), Sch. I, Art. 120.*

Under the proviso to section 111A of the Bengal Tenancy Act, 1885, a person entered as a tenure-holder in a record-of-rights prepared under that Act can maintain a civil suit for a declaration that he is an occupancy *raiyat*; the period of limitation for the suit is not governed by section 104H of the above Act, but by the Indian Limitation Act, 1908, Schedule I, Article 120, and, consequently, is six years from the publication of the record-of-rights.

Promoda Nath Roy v. *Asiruddin Mandal* (1) and *Kumeda Prosunna Bhuiya* v. *Secretary of State for India in Council* (2) approved.

If, in a suit of the above nature, a District Judge has found, on appeal, that the plaintiff is an occupancy *raiyat*, there being evidence to support that finding, and no reason for supposing that he did not give proper weight to the presumptions under section 5, sub-section (*5*) and section 103B of the Act, the Code of Civil Procedure, 1908 (sections 100 and 101) makes his finding binding in Second Appeal.

Durga Chowdhrani v. *Jewahir Singh Chowdhri* (3) followed.

Although settlement-records, prepared under Regulation VII of 1822, may not have the same evidentiary value as settlement-records prepared under the Bengal Tenancy Act, 1885, they are evidence against the Government as to the nature of the holding.

Judgment of the High Court reversed.

Appeal (No.11 of 1926) from a decree of the High Court (August 4, 1924) reversing a decree of the District Judge of Murshidabad (December 9, 1921) which reversed a decree of the Subordinate Judge of Murshidabad.

The suit was brought by the appellants on June 29, 1917, for declarations: (*a*) that the company was an

*Present: Lord Carson, Sir George Lowndes and Sir Binod Mitter.

(1) (1911) 15 C. W. N. 896.
(2) (1914) 19 C. W. N. 1017.
(3) (1890) I. L. R. 18 Calc. 23; L. R. 17 I. A. 122.

occupancy *raiyat*, not a tenure-holder of *Char* Narayanpur, and (*b*) that the entry in the record-of-rights, prepared under the Bengal Tenancy Act, 1885, that the company was a tenure-holder of the lands, was a nullity. The record-of-rights in question had been published in 1915, and the land in suit was about 800 *bighas* in area.

In addition to the respondent, who alone contested the suit, there were joined as defendants the *zemindar* and all persons claiming to hold as tenants of the land in suit.

The facts of the case and the issues framed appear from the judgment of the Judicial Committee.

The Subordinate Judge dismissed the suit. He was of opinion that the plaintiffs' predecessors, the Menasakkans, had first acquired the land in 1841 under an *ijara* from Government as rent-collectors and that, consequently, having regard to section 5 of the Act, they were tenure-holders, even if they cultivated the land themselves after the termination of the *ijara*. He held also that the suit was barred under section 104H.

An appeal to the District Judge was allowed. He found that the Menasakkans had acquired and used the land for the purpose of cultivation before the *ijara* of 1841, and that they were occupancy tenants. He made a decree so declaring, but considered that he was precluded by authority from declaring that the entry in the record was a nullity.

Upon a Second Appeal to the High Court (Sanderson C. J. and Chotzner J.) the decree of the Subordinate Judge was restored. The learned Chief Justice, who delivered the judgment, was of opinion that the view that the Menasakkans had been in possession before 1841 was merely speculative, and that there was no evidence to displace the presumption that the entry in the record-of-rights was correct.

De Gruyther K. C. and *E. B. Raikes*, for the appellants. Under the Code of Civil Procedure, 1908,

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sections 100 and 101, the District Judge's finding that the plaintiffs were occupancy *raiyats* was binding upon the High Court: *Durga Chowdhrani* v. *Jewahir Singh Chowdhri* (1). There was evidence to support the finding, more particularly the *rubokaris* included in the settlement record of 1880 made under Regulation VII of 1822. The suit was maintainable under the proviso to section 111A of the Bengal Tenancy Act, and was not barred; section 104H does not apply to it: *Promoda Nath Roy* v. *Asiruddin Mandal* (2), *Kumeda Prosunna Bhuiya* v. *Secretary of State for India in Council* (3).

Dunne K. C. and *Kenworthy Brown*, for the respondent. Under section 103B of the Bengal Tenancy Act, 1885, the entry in the record-of-rights was to be presumed to be correct. The onus of displacing that presumption was not discharged: the evidence really supported the presumption. The finding of the District Judge was not binding in Second Appeal. There was no evidence whatever that the Menasakkans had cultivated the land before they became *ijaradars*. It was a question of construction whether the settlement record made under Regulation VII of 1822 showed that the plaintiffs were *raiyats*. The fact that the plaintiffs were recorded as *raiyats* in that record, without any proof that there was then any dispute as to their status, did not displace the presumption under section 103B: *Secretary of State for India in Council* v. *Gobind Prashad Barik* (4). Further, the suit was under section 104H, sub-section (3) (*e*) and was barred by section 104H, sub-section (2). The proviso to section 111A merely preserves the right to bring civil suits given by section 104H; if the present suit is under section 111A, not under section 104H, sub-section (3) (*e*), the latter provision was not needed. The decisions relied on to the contrary were wrongly decided.

(1) (1890) I. L. R. 18 Calc. 23 (30); L. R. 17 I. A. 122 (127). (2) (1911) 15 C. W. N 896. (3) (1914) 19 C. W. N. 017. (4) (1916) 21 C. W. N. 505.

The judgment of their lordships was delivered by

SIR BINOD MITTER. This is an appeal from the judgment and decree of the High Court of Judicature at Fort William in Bengal, dated the 4th August, 1924, which reversed the decree of the 9th December, 1921, and restored the decree of the Subordinate Judge of Murshidabad, dated the 28th March, 1919.

The questions for determination in the suit, out of which the present appeal arises, were whether the appellants are *raiyats* or tenure-holders of a certain holding in *Char* Narayanpur consisting of about 800 *bighas*, (2) whether the suit comes within the purview of section 104H or the proviso to 111A of the Bengal Tenancy Act, and (3) whether the suit is within time, having regard to the law of limitation under section 104H of the same Act.

The Subordinate Judge held that the appellants have not proved that the entry in the record-of-rights, finally published on the 2nd April, 1915, to the effect that the appellants are tenure-holders is incorrect; he further held that the plaintiffs' suit is not maintainable under the provisions of section 111A and that the same is barred under section 104H, as it was not brought within six months from the date of the certificate of the final publication of the record-of-rights.

From the decision of the Subordinate Judge, there was an appeal to the District Judge of Murshidabad, who held that the appellants were occupancy *raiyats* and not tenure-holders, and he further held that the suit was maintainable under section 111A and was not barred by limitation.

From this decision, there was a Second Appeal to the High Court and that Court held that there was no reliable evidence to justify the District Judge's conclusion that the original purpose for which the tenancy was created was for cultivation.

The High Court further held that the onus, of showing that the entry in the record-of-rights is not correct, was upon the appellants and that there was no evidence to justify the finding that they have

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discharged the onus. The High Court did not decide any other points involved in the case.

Their Lordships have to observe, at the outset, that no Second Appeal lies on the ground that the District Judge came to an erroneous finding of fact. The only question which the High Court could consider was whether the District Judge had before him any evidence proper for his consideration in support of his finding. Section 100 of the Code of Civil Procedure, being Act No. V of 1908, corresponds with section 584 of the Civil Procedure Code of 1882. The construction of section 584 of the Civil Procedure Code of 1882 has often been considered by the Board. In *Durga Chowdhrani* v. *Jewahir Singh Chowdhri* (1), the Board said :—

> It is enough in the present case to say that an erroneous finding of fact is a different thing from an error or defect in procedure, and that there is no jurisdiction to entertain a Second Appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Where there is no error or defect in the procedure, the finding of the first appellate court upon a question of fact is final, if that court had before it evidence proper for its consideration in support of the finding.

In *Anangamanjari Chowdhrani* v. *Tripura Sundari Chowdhrani* (2), the Board laid down the law to the same effect :

> "It was, in the opinion of their Lordships, within their jurisdiction" (that is to say within the jurisdiction of the judges on a Second Appeal) "to dismiss the case if they were satisfied that there was, as an English lawyer would express it, no evidence to go to the jury, because that would not raise a question of fact such as arises upon the issue itself, but a question of law for the consideration of the Judge."

The learned District Judge, in his judgment, held : (1) that the holding in question was acquired for the purpose of cultivation of indigo by hired labour; (2) that the *ijara* of 1840 could not be rightly regarded as the origin of the holding, and that the origin was unknown, and from these findings of fact, he came to the conclusion that the entry in the record-of-rights was wrong and that the appellants were occupancy *raiyats*.

(1) (1890) I. L. R. 18 Calc. 23 (30); L. R. 17 I. A. 122 (127). (2) 1881) I. L. R. 14 Calc. 740 (747); L. R. 14 I. A. 101 (110).

It seems to their Lordships that the real test, whether a holding is a tenure or *rayati*, depends upon the purpose for which the holding was acquired.

The respondent relied on section 103B, clause (3) and section 5, sub-section (5) of the Bengal Tenancy Act. Their Lordships have no reason to doubt that in coming to his findings of fact the learned District Judge gave proper weight to the entry in the record-of-rights to which it is entitled under section 103B. He has expressly referred to the statutory presumption under section 5, sub-section (5). If he had evidence proper for his findings, notwithstanding the statutory presumptions, then it seems to their Lordships that his findings of fact were final and conclusive. See *Kumeda Prosunna Bhuiya* v. *Secretary of State for India in Council* (1).

Their Lordships will now consider whether there was before the learned District Judge evidence proper for his finding.

It appears that the Menasakkans, to whom the holding originally belonged, conveyed their interest, in 1873, to Jogendra Ray and others, who in their turn sold in 1887 to Messrs. Louis Payen & Company. Louis Payen & Company sold their interest in the holding to the appellants in 1913. It is a fact, worthy of consideration, that, in the present suit, the *zemindars* or proprietors, under whom the appellants hold, and also the sub-tenants under them, admitted that the appellants are occupancy *raiyats*. It appears from the final settlement report of 1890 that occupancy holdings in the *mehal* in which *Char* Narayanpur is situate are, by local custom, transferable. *Char* Narayanpur has been assessed to revenue from time to time by the Government. The appellants drew their Lordships' attention to the *rubokaris* of the 27th March, 1851, the 23rd February, 1861, and the 15th March, 1871, and the other papers prepared for purposes of such settlements. These settlements were for ten years respectively. The settlement of 1871 expired on the 31st March, 1880, but was extended to

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the 31st March, 1890. From these settlement records, including the *rubokaris*, it appears that the only tenants cultivating the land were Baldev Saha, Ramprasad and Beniprasad Hazari (who were also the *zemindars* of the *mouza*) and the Menasakkans. The *zemindars* were growing *dofasli* crops, and the Menasakkans were cultivating indigo. These settlement records were prepared under Regulation VII of 1882, and, although they may not have the same evidentiary value as the settlement records prepared under the Bengal Tenancy Act, still, in their Lordships' opinion, they are evidence against the Secretary of State for India in Council.

Mr. De Gruyther has drawn their Lordships' attention also to certain *ekrars* executed by the tenants in favour of Louis Payen & Company, as also to the account books ranging from 1887 to 1901. These account books show clearly that, at any rate, indigo was being cultivated on a portion of the land in question by Louis Payen & Company through hired labourers.

Suits had been instituted upon the *ekrars*, given by the various *jotedars* or tenants under Louis Payen & Company and the tenants contested these suits, on the allegation that these *ekrars*, in which Louis Payen & Company were acknowledged to be occupancy *raiyats*, were taken by force, but these *ekrars* were held to be valid.

It is not necessary to go into further detail as regards the evidence, but their Lordships are satisfied, after a careful examination of the record, that there was evidence before the learned District Judge proper for his finding. The learned District Judge did not discuss in detail the various settlement records and other evidence, oral and documentary, to which their Lordships' attention has been drawn, but their Lordships have no reason to doubt that the learned District Judge fully considered them.

Having regard to the practice of the High Court in Second Appeals, it seems probable that the full record of the case which was laid before their

Lordships was not placed before the learned Judges of the High Court.

The two other points that their Lordships have to decide are whether the suit is maintainable and whether the same is barred by limitation. The identical points came up for decision in the case of *Promoda Nath Roy* v. *Asiruddin Mandal* (1) and the High Court decided that a suit like the present would come within the proviso to section 111A of the Bengal Tenancy Act, and that the period of limitation, applicable to such suits, was that provided by Article 120 of the Limitation Act.

Their Lordships concur in this decision and the reasons given in its support by Mr. Justice Chatterjea.

For the reasons aforesaid, their Lordships are of opinion that the appeal should be allowed, the decree of the High Court set aside, and the decree of the District Court restored, with costs in all the courts, and they will humbly advise His Majesty accordingly.

The respondent will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellants: *Burton, Yeates and Hart.*

Solicitor for the respondents: *Solicitor, India Office.*

A. M. T.

(1) (1911) 15 C. W. N. 896.