APPELLATE CIVIL.

Before Nasim Ali and Mukherjea JJ.

AYESHA KHATUN 1937

v. *July* 22.

CHITTAGONG PORT COMMISSIONERS.*

Bengal Tenancy—Record-of-rights—Amendment—Bona fide *mistake*—*Bengal Tenancy Act (VIII of 1885), ss. 106, 115B.*

Section 115B of the Bengal Tenancy Act of 1885 authorises the review and correction of entries in a record-of-rights by the revenue-officers which have been made owing to *bona fide* mistakes.

Per MUKHERJEA J. The words "*bona fide* mistake" in that section though not confined to mere clerical errors or accidental slips do not include cases where the entries are challenged as erroneous by one party and regarding which disputes do exist, which might have been decided under s. 106 of the Act.

Raj Mohan Guha v. *Alam Gazi* (1) and *Baidchand Sen* v. *Siris Chandra Sen* (2) followed.

APPEAL FROM APPELLATE DECREE preferred by the defendants.

The material facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Chandra Shekhar Sen for the appellants.

Suresh Chandra Talukdar and *Mahendra Kumar Ghosh* for the respondents.

NASIM ALI J. This appeal arises out of an application filed by the respondents under s. 115B of the Bengal Tenancy Act for correction of an entry in the finally published R. S. record relating to *mouzâ* Bhangachar No. 171 under *thânâ* Patiya in

*Appeal from Appellate Decree, No. 143 of 1936, against the decree of H. D. Benjamin, District Judge of Chittagong, dated Aug. 15, 1935, reversing the decree of Jamini Kanta Basu, Assistant Settlement Officer of Chittagong, dated Mar. 5, 1935.

(1) (1912) 17 C. W. N. 625. (2) (1913) 19 C. L. J. 251.

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the district of Chittagong. The disputed lands were recorded in *khatiyân* No. 532 of the R.S. records as being in the possession of the appellants as appertaining to their *sâdhâran noâbâd tâluk* No. 56 under Government. The rent for the *tâluk* was settled at Rs. 95-8 under Part II of Chap. X of the Bengal Tenancy Act after the final publication of the record-of-rights. The *bona fide* mistakes alleged by the respondents are these :—

(1) Although the respondents are the proprietors of the disputed lands, Government has been wrongly recorded as proprietors; (2) although the lands were in the *khâs* possession of the respondents, they were not recorded in their *khâs khatiyân*, namely, *khatiyân* No. 252, but were wrongly recorded as being in the possession of the defendants as *noâbad tâlukdârs* under the Government.

The respondents accordingly prayed that the disputed lands should be transferred to their *khâs khatiyân* from the appellants' *khatiyân*, namely, *khatiyân* No. 532. The Assistant Settlement Officer who heard the application, on a consideration of the evidence in this case, came to the conclusion that the respondents were the proprietors of the disputed lands but the appellants were in actual possession of the lands at the time of the revisional survey as appertaining to their *sâdhâran tâluk* No. 56. He also held that he was not competent to alter the rent of the appellants' *tâluk* as the rent had become conclusive under s. 104J of the Bengal Tenancy Act. He accordingly ordered the entry to be recorded in the following manner :—

A (new) *tâluki khatiyân* should be opened in the names of the possessors mentioned in *khatiyân* No. 532 subordinate to *khatiyân* No. 252 of *mouzâ* Bhangachar No. 171 under *thânâ* Patiya similar to the said *khatiyân*, and in the "Remark" column of the said new *khatiyân* should be entered "inclusive of the *jamâ* of *khatiyân* No. 532, total *jamâ* Rs. 95-8" and in the column for "incidents" should be written "Tenure, *meyâdi*, rent liable to be enhanced." The *dâgs* Nos. 1731, 1734, 2780, 2784, 2791, 2792, 2788, 2787, 2769, 2793 and 2796 (*i.e.* the disputed lands) should be excluded from the *khatiyân*

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No. 532 and included in the said new *khatiyân*. In the remark column of *khatiyân* No. 532 should be mentioned "including the *jamâ* of the said new *khatiyân*."

The respondents appealed to the Special Judge. The learned Special Judge on the evidence has come to the conclusion that the defendants never exercised any possession over the disputed lands and have not any right or title to them. He agreed with the Assistant Settlement Officer that the rent of the defendants' *tâluk* could not be altered, but he was of opinion that the defendants' remedy was to apply for and enforce by a suit necessary reduction of the *jamâ* on the ground of diminution of the area. He, accordingly, allowed the appeal and directed the transfer of the disputed lands to the respondents' *khâs khatiyân* No. 252. The defendants appeal to this Court.

Two points have been raised in support of this appeal: (1) that s. 115B of the Bengal Tenancy Act is not at all attracted to the facts of this case; (2) that the finding of the Special Judge that the defendants were not in possession of the disputed lands at any time is not a proper finding at all and is erroneous.

Before 1906 entries in the finally published record-of-rights could be corrected only by suits under s. 106 of the Bengal Tenancy Act. In that year a new section, namely, 108A, was introduced into the Act and that section is now s. 115B which is in these terms:—

> Any revenue officer specially empowered by the Local Government in this behalf may, on the application or of his own motion, within two years from the date of the certificate of the final publication of the record-of-rights under sub-s. (2) of s. 103A, correct any entry in any such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake:
>
> Provided that no such correction shall be made if an appeal affecting such entry has been filed under s. 115C or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

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The entry in question shows that the defendants hold the disputed lands as *noâbad tâlukdârs* under Government. The rent which has been assessed under Part II of Chap. X of the Bengal Tenancy Act in respect of these lands is payable to Government. Government, therefore, is interested in the entry. No notice, however, appears to have been given to Government in the present case. The proviso to s. 115B imposes a duty on the revenue officer exercising powers under s. 115B to give reasonable notice to all the parties interested in the entry to appear and be heard in the matter. In the case of *Raj Mohan Guha* v. *Alam Gazi* (1) this Court observed :—

> Section 108A has a much wider scope than the correction of obvious errors or incidental slips in the record-of-rights. It entitles the Settlement Officer to correct the record where there has been a *bona fide* mistake: such mistake need not necessarily be the mistake of the Settlement Officer ; it may very well be a mistake made by one of the parties concerned. Section 108A in substance authorises a Settlement Officer to reconsider the matter on merits.

These observations imply that s. 115B authorises review of the entry. That review, however, can be made only when the revenue officer is satisfied that the entry was made owing to a *bona fide* mistake. "*Bona fide*" means good faith. If the entry is admitted by the parties to be wrong, it may be taken to have been due to a *bona fide* mistake. If the entry contains clerical or arithmetical mistakes which in spite of due care and caution are bound to creep in or where there are accidental omissions, the error may be taken to be due to *bona fide* mistake. In such cases the revenue officer can review the entry. Where, however, there is no such mistake and there is a serious dispute as to whether the entry is wrong and the decision on that dispute depends upon the weighing of the evidence before the revenue officer, can it be said that the entry has been made owing to a *bona fide* mistake? In view of my conclusion on the second point raised by the appellant I express no final opinion on the first point raised by the learned advocate for the appellants.

(1) (1912) 17 C. W. N. 625, 626-7.

The learned Special Judge while dealing with the question of possession of the defendants did not at all take into consideration all the evidence in the case on which the Assistant Settlement Officer relied in support of his finding that the defendants were in possession of the disputed lands at the time of the final publication of the record-of-rights. He has not also given the defendants the benefit of the statutory presumption under s. 103B of the Bengal Tenancy Act. The finding of the learned Special Judge that the defendants never exercised any act of possession over the disputed land is therefore not binding on us in Second Appeal. As the evidence about possession which the respondents adduced to rebut the presumption is short, we asked the learned advocates on both sides in this case to place before us the whole evidence to enable us to come to a finding as to the question whether the defendants were in possession of the disputed lands at the time of the final publication of the record-of-rights. After going through the evidence in this case we do not find any satisfactory evidence to show that the defendants were not in possession of the disputed land at the time of the final publication of the record-of-rights. The evidence of the two witnesses examined on the side of the respondents is not sufficient to indicate that the defendants were not in possession of the disputed lands when the record-of-rights was prepared.

I, therefore, accept the finding of the trial Court that the defendants were in possession of the disputed lands at the time when the record was prepared. It cannot be said, therefore, that the entry about defendants' possession was made under a mistake.

The result therefore is that this appeal is allowed, the judgment and decree of the Special Judge are set aside and those of the Assistant Settlement Officer are restored with costs in this Court as well as in the lower appellate Court. Hearing fee in this appeal is assessed at two gold mohurs.

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MUKHERJEA J. I agree with my learned brother in the order that has been passed and I desire to add a few words.

Section 115B of the Bengal Tenancy Act authorises the correction of entries in a record-of-rights which has been made owing to a *bona fide* mistake. It is obviously a different thing from deciding a dispute and correcting an entry on that basis as is contemplated by s. 106 of the Bengal Tenancy Act. The legislature has allowed four months' time from the date of the certificate of final publication of the record-of-rights for any aggrieved party to come before the revenue officer and pray for a decision of a dispute regarding an entry that has been made in or omitted from the records. When no proceeding under s. 106 is instituted and the records become final, it may still appear that there are *bona fide* mistakes which have crept into the records. They may not be in the nature of clerical errors or accidental slips or omissions merely, as is held in the case of *Raj Mohan Guha* v. *Alam Gazi* (1). But, in my opinion, they cannot include cases where the entries are challenged as erroneous by one party and regarding which disputes do exist which might have been decided under s. 106 of the Bengal Tenancy Act. The legislature cannot be taken to have intended to give the same rights to the parties under s. 115B of the Bengal Tenancy Act which have been given to them already under s. 106 of the Act and that after the lapse of the period of limitation laid down in the latter section. It has been held in the cases of *Raj Mohan Guha* v. *Alam Gazi* (1) and *Baulchand Sen* v. *Siris Chandra Sen* (2) that the section authorises the revenue officer to reconsider his decision on merits, but the reconsideration must be confined to finding out as to whether there was a *bona fide* mistake or not. *Bona fide* mistake, in my opinion, means a genuine mistake which is possible even after due care and caution. If the Settlement Officer, on a consideration of the evidence before him, deliberately

(1) (1912) 17 C. W. N. 625. (2) (1913) 19 C. L. J. 251.

comes to a particular conclusion regarding the rights of the parties and makes an entry to that effect in the records, however much his judgment might be wrong or the decision erroneous, it cannot be said that there was a *bona fide* mistake vitiating the records. On the other hand, if the conclusion drawn by the Settlement Officer does not follow from his own premises, or one part of the record contradicts the other, there may be in such and similar cases *bona fide* mistakes and there may be scope for reconsideration of the matter on the merits. In the case before us so far as the superior title is concerned, it cannot be disputed that the entry was due to a *bona fide* mistake as is apparent from the admissions of both sides and it was within the competency of the Assistant Settlement Officer to correct it under s. 115B of the Act. So far as the question of the appellants' possession and tenancy right is concerned, I have very great doubts as to whether it can be said to be a *bona fide* mistake at all. It is a matter which has to be settled on a consideration of the relative weight of two sets of evidence adduced on both sides after the final publication of the record-of-rights. But as I agree with my learned brother in setting aside the finding of the lower appellate Court and restoring that of the Assistant Settlement Officer, there can be no question of any mistake either *bona fide* or otherwise coming in after our decision.

Under the circumstances I agree that the appeal should be allowed, the judgment and decree of the lower appellate Court set aside and that of the Assistant Settlement Officer restored.

Appeal allowed.

A. K. D.