APPELLATE CIVIL.

Before Sen J.

1939

June 16, 19, 26.

SRISH CHANDRA NANDI

v.

HARENDRA LAL RAY CHAUDHURI.*

Landlord and Tenant—*Squatter—Tenancy by implication—Person taking possession of land and settling tenants thereon, if a tenant.*

Where a person squats on a piece of land belonging to the landlord and cultivates it himself, a relationship of landlord and tenant is created by implication between him and the landlord, but this principle has no application where, after taking possession of the land, he settles tenants upon it and takes rent from them.

Nityanund Ghose v. *Kissen Kishore* (1) distinguished.

Gagan Chandra Chuckerbutty v. *Birendra Kishore Manikya* (2) relied on.

APPEAL FROM APPELLATE DECREE preferred by the plaintiff.

Material facts and arguments in the appeal appear sufficiently from the judgment.

Ramaprasad Mukhopadhyaya for the appellant.

Atul Chandra Gupta and *Bankim Chandra Banerji* for the respondents.

Cur. adv. vult.

SEN J. The plaintiff appellant is Maharaja Srish Chandra Nandi, who instituted this suit by his next friend, the Manager of the Kasimbazar Raj Wards Estate. His case briefly is as follows:—

He is the owner in *zemindâri* interest of a 12 annas 6 pies share and in *patni* interest of a 3 annas 6 pies

*Appeal from Appellate Decree, No. 1145 of 1937, against the decree of Bishnu Pada Ray, First Subordinate Judge of Faridpur, dated March 25, 1937, affirming the decree of Rabindra Nath Ray, First Munsif of Chikandi, dated May 15, 1936.

(1) [1864] W. R. (Act X Rulings) 82. (2) (1914) 22 C. L. J. 135.

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share in an estate bearing *tâluk* No. 5582 of the Faridpur Collectorate. The lands in suit are situated in Muktarer Char and they are recorded in *khewât* No. 69/27. The plaintiff's case is that this land, which measures about 944 acres appertains to *tâluk* No. 5582. This land was diluviated by the river Padma and then reformed *in situ*. On reformation, some of the predecessors-in-interest of the defendants went and took possession of the lands under the then *mâliks* of *tâluk* No. 5582. No rent was paid by these persons. Later on negotiations took place between the plaintiff's predecessor and the defendants for settling a rent for the land of which they had taken possession. Before any decision could be arrived at a survey settlement took place and the land was recorded as being held by the defendants as tenure-holders under the predecessor-in-interest of the plaintiff. As no rent had been fixed, the settlement record described the interest of the defendants as "*bebandobasti ijârâ*," that is to say, as a tenure with respect to which there had been no *bandobast* or settlement. The plaintiff relying upon the settlement record asserts that the defendants are tenure-holders under him and on this ground he has brought this suit for the assessment of rent and for the recovery of the rent assessed together with cess and damages for the period 1336 to 1339 Pous B.S. I wish to make it clear at this stage that the plaintiff-appellant rested his claim on the settlement record. He sued the defendants for assessment of rent on the basis that they are tenure-holders and not on any other basis.

The defendants raised many defences in the Court below. They contended *inter alia* that the plaintiff was not the owner of *tâluk* No. 5582, that the lands in suit did not appertain to the *tâluk*, that there was no relationship of landlord and tenant between the defendants and the plaintiff and that the claim for the enhancement of rent was barred by the law of limitation. Both the Courts below have held that the plaintiff is the owner of *tâluk* No. 5582 and that

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the land in suit appertains to this *tâluk*, but they dismissed the suit on two grounds, *viz.* :—(i) that the plaintiff has failed to establish that any relationship of landlord and tenant exists between him and the defendants and (ii) that the claim for assessment of rent is barred by limitation.

It is now admitted that the plaintiff is the owner of *tâluk* No. 5582 and that the land in suit appertains to that *tâluk*. The only question for decision in this appeal, therefore, is whether the lower appellate Court was right in dismissing the suit on the two grounds mentioned above.

The story of the plaintiff that negotiations were going on between the predecessors of the parties regarding the fixation of a rent has been disbelieved by both the Courts. Mr. Mukhopadhyaya appearing for the appellant does not suggest that this finding should be upset on Second Appeal. Admittedly there was no express contract between the parties or their predecessors-in-interest whereby the relationship of landlord and tenant was created. The plaintiff relies on an implied contract. Mr. Mukhopadhyaya refers me to the case of *Nityanund Ghose* v. *Kissen Kishore* (1), and he argues that inasmuch as the defendants are in occupation of land which appertains to the *touzi* of the plaintiff it should be implied that the defendants and their predecessors occupied the land on the footing of tenants. An implied tenancy according to him has come into existence by the conduct of the parties and, that being so, the plaintiff is entitled to have rent assessed. It will be necessary at this stage to set out certain facts which have been established. Thereafter I shall deal with the question whether the principle relied upon by Mr. Mukhopadhyaya can be applied to the circumstances of this case. The defendants' case is that this *char* began to be formed in the river Padma from the year 1290 B.S. and that by the year 1300 B.S. it was completely formed. As soon as the *char* was

(1) [1864] W. R. (Act X Rulings) 82.

formed some *mukhteârs* of Madaripur and Munshiganj who were known as the Chattopadhyayas together with their co-sharer Jaga Bandhu Bhattacharya took possession of this *char* by settling tenants thereon and realising rents. For this reason the *char* was known as Muktarer Char. Thereafter certain persons known as the Kundu Babus of Domesha brought a suit against the *Mukhteâr* Babus and the Bhattacharjyas. They obtained a decree and took possession of the land in suit together with other land. Thereafter, the Kundu Babus and the defendant No. 1 gradually acquired the interest of the *Mukhteâr* Babus and the Bhattacharjyas. Then a quarrel arose between the Kundu Babus and the defendant No. 1. Each tried to oust the other. Finally, there was an agreement in the year 1313 B.S., by which the defendant No. 1 got a 12 annas share in the land and the Kundu Babus 4 annas share. In a partition suit, the Kundu Babus' share devolved on the defendants Nos. 8 to 16 and one Nanda Lal Kundu, whose share was 1 anna. This 1 anna share was purchased by the defendant No. 1, who thus became owner of a 13 annas share in Muktarer Char, while the defendants Nos. 8 to 16 became the owners of three annas share therein. The defendants' case is that they or their predecessors never cultivated the land themselves. They possessed the land through tenants. They assert that they are in "*jabar dakhal*", that is to say, in forcible possession and that they or their predecessors never recognised the plaintiff or anybody else as landlords. Then came the publication of the settlement record wherein the defendants were described at tenure-holders under the *tâluk* No. 5582 and wherein the tenure was described as being *bebandobasti ijârâ*. The tenants under the defendants were described as *râiyats*. The defendants' case is that the settlement record is without any foundation. Now, the facts stated by the defendants as to how and when the *char* came to be formed

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and as to how they came to be in possession of the land have been accepted as being true by both the Courts. A history of the *char* has been written by Mr. Jack, the Settlement-Officer, and it supports the defendants' case. Both the Courts have referred to this history. Mr. Jack in his history says that, on the reformation of this *char*, which measured some 10 square miles, some *mukhteârs* of the Madaripur Court without a shadow of real claim pounced upon it, established tenures, brought it under cultivation and converted it into a fine property, using meanwhile their influence and position in the Courts to frustrate the efforts of the rightful owners to oust them. He goes on to say that these persons subsequently sold the property to Harendra Babu of Bhagyakul (who is defendant No. 1) and the Domesha Kundus.

The evidence establishes that these *Mukhteâr* Babus and the Bhattacharjyas did not take possession of the *char* as cultivators or squatters. What they did was to settle cultivators on the land as their tenants and to take rent from them. They never recognised any one as their landlord. The defendants have succeeded them and there has been no recognition of the plaintiff as landlord.

The question which now arises is whether in these circumstances it can be said that there was an implied relationship of landlord and tenant between the predecessor-in-interest of the plaintiff and the defendants. Mr. Mukhopadhyaya at one stage argued that even in the circumstances stated by the defendants the relationship of landlord and tenant would be impliedly created and that the principle laid down in the case of *Nityanund Ghose* v. *Kissen Kishore* (*supra*) would apply. Later, however, he did not persist in this view. In my opinion, this view is clearly unsustainable. The principle laid down in the case of *Nityanund Ghose* v. *Kissen Kishore* (*supra*) applies to a completely different type of circumstances. What was stated there is that, in this country, the technical doctrine of the English law of landlord and

tenant would not always apply. It was said that here it was a very usual thing for a man to squat on a piece of land or to take into cultivation an unoccupied or waste piece of land and that tenancy in a great many districts in Bengal commenced in this way. Their Lordships went on to say that where tenancy does so commence it is presumed that the cultivator cultivates by the permission of the landlords and is under obligation to his landlord to pay him a fair rent when the latter may choose to demand it. They held that if a person chooses to cultivate the *zemindâr's* lands and the *zemindâr* lets him to do so, there is an implied contract between them creating the relationship of landlord and tenant. That case deals with squatters who cultivate the land themselves. It can have no application to persons who are not cultivators and who settle persons on the land as their tenants ignoring the *zemindâr* or the proprietor. In this case it has been established that the predecessors of the defendants were *mukhteârs* and the co-sharers of *mukhteârs*. They were Brahmins and were certainly not of the cultivating class. It has been established that they settled persons on the land as cultivators and that they did not recognise anybody as landlord. In these circumstances, I cannot see how it can be said that there was any implied relationship of landlord and tenant between them and the proprietors of the *zemindâri*. In the case of *Gagan Chandra Chuckerbutty* v. *Birendra Kishore Manikya* (1), the case of *Nitaynund Ghose* v. *Kissen Kishore* (*supra*) has been considered and explained and the view which I have taken is supported by this decision. Referring to the case of *Nityanund Ghose* v. *Kissen Kishore* (*supra*) and certain other cases Mookerjee J. makes the following observation :—

> On the basis of these decisions, it has been broadly contended, that if a person squats on the land of another and proceeds to cultivate it, he makes himself a tenant under such person, that although the proprietor does not expressly give permission to the squatter to occupy the land and the latter does not expressly contract to pay rent to the proprietor, yet a tenancy is established by presumption, and that it becomes open to the proprietor any length of time afterwards to demand rent from the occupier. In our

(1) (1914) 22 C. L. J. 135.

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opinion, this proposition is not deducible from the cases mentioned. It is perfectly plain that if a person squats upon the land of another and if the latter accepts him as his tenant, either by express declaration or by implication, the squatter acquires the status of a tenant. But it is clearly open to the proprietor to repudicate tenancy and to evict the person who has come upon the land without his consent. It is further impossible to support on principle the proposition that if a person occupies the land of another, it is open to the proprietor, any length of time afterwards, to treat the occupier as tenant, although the latter has not given any indication that he intended to hold the land as tenant. This is in accord with the decisions in *Birendra Kishore Manikya* v. *Gagan Chandra Chuckerbutty* (1) and *Mati Lal Karnani* v. *Darjeeling Municipality* (2). There is a further difficulty in the way of the plaintiff-respondent. The principle which he enunciates as deducible from the case of *Nityanund* v. *Kissen Kishore* (*supra*) applies only to squatters. In the case before us, the defendant was recorded as an intermediate tenure-holder, and the entries from the record-of-rights, which have been placed before us, show conclusively that there are settled *ráiyats* under the defendant. The defendant, consequently, is not a squatter in any sense of the term, and even if the broad proposition formulated by the respondent were accepted, it would be of no assistance to his case.

It is clear therefore that the principle enunciated in *Nityanund's* case can have no application to the present case.

Mr. Mukhopadhyaya then contended that there was no clear finding as to the manner in which the predecessors-in-interest of the defendants originally took possession of the *char*. He argued that it may be that they went on the *char* as cultivators and he suggested that the case should be sent back to the Court below to ascertain this question. In my opinion, no effect can be given to these contentions. The burden is on the plaintiff to establish the relationship of landlord and tenant. It is for him to show how this relationship was created. In the present case, the plaintiffs merely relied upon the statement in the settlement record to the effect that the defendants were tenure-holders under the proprietors. It is true that a presumption of correctness attaches to the settlement record. But that presumption is a rebuttable one. The evidence given by the defendants to rebut the presumption of the settlement record has been accepted by the Courts below and I have no hesitation in concurring in that view. Where it is established that the settlement record is without any foundation the burden shifts back on the plaintiff to

(1) (1913) 22 C. L. J. 132. (2) (1912) 17 C. L. J. 167.

show how the alleged relationship of landlord and tenant came into existence. The plaintiff did not anywhere suggest that the predecessors-in-interest of the defendants came on the land as squatters. In the grounds of appeal, in the present case, this point has not been taken. It has nowhere been said that the Courts were wrong in holding that the predecessors-in-interest of the defendants were not squatters. On the contrary, the grounds of appeal in this Court go upon the basis that the principle of *Nityanund's* case (*supra*) would apply to persons who are not squatters and that even upon the findings of fact arrived at by the Court below the Court should have held that the principle of *Nityanund's* case (*supra*) applied to the present case and that the relationship of landlord and tenant had been created by the conduct of the parties. Nowhere has it been suggested that the defendants or their predecessors were ever cultivators. The plaintiff's case as argued in the Courts below and as argued at the beginning in this Court was to the effect that a tenure-holder's interest may be created by implication by the act of a person, who without any right goes upon the land of another and establishes tenants thereon. In my opinion, a middleman's interest cannot be created in this fashion. The plaintiff has, therefore, entirely failed to establish any relationship of landlord and tenant as between himself and the defendants. His suit for assessment of rent must, therefore, fail on this ground. There are no good grounds for a remand.

The Courts below held further that the plaintiff's suit was barred by limitation. Mr. Mukhopadhyaya, on behalf of the appellant, contended that this decision was wrong. I confess I am unable to appreciate the learned Judge's view regarding the question of limitation. The question of limitation, in my opinion, does not arise in this case at all. The plaintiff's claim for assessment of rent can be barred by limitation only if the plaintiff had at some time or other the right to claim assessment of rent. Where this right never existed it cannot be said that a suit to

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enforce this claim is barred by limitation. The position in this case is that the defendants were never the tenants of the plaintiff and that therefore the plaintiff never had any right to get an assessment of rent. The question of limitation could only arise if the relationship of landlord and tenant between the parties with respect to the land in suit had come into existence at some time or other. Where this relationship has never been in existence there can be no question of limitation. I agree with the contention of Mr. Mukhopadhyaya that if the defendants were tenants of the plaintiff, then the fact that the plaintiff had not realised rent from them for a period of over twelve years would not disentitle the plaintiff from having the rent assessed. So long as the relationship of landlord and tenant exists, the landlord, in my opinion, has always the right to get the rent assessed. The question of limitation of course would arise if the defendants were at one time tenants and repudiated the tenancy setting up a title adverse to their landlord. In this case, however, as I have stated before, there was no relationship of landlord and tenant at any time. There was consequently no repudiation and therefore the question of limitation is one which does not arise. I am unable to appreciate the views of the learned lower Courts on this question. Although there is no bar to the plaintiff's suit by reason of limitation, the plaintiff's suit must fail on the other ground, namely, that there is no relationship of landlord and tenant between the plaintiff and the defendants.

I accordingly uphold the decree passed by the Court below and dismiss this appeal with costs.

Leave to appeal under s. 15 of the Letters Patent is asked for and is refused.

Appeal dismissed.

G. K. D.