

1918
March, 20.

Before Sir Henry Richards, Knight, Chief Justice, and Mr Justice Banerji.
BASANT BIHARI GHOSHAL (PETITIONER) v. THE SECRETARY OF
STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY).*

Civil Procedure Code (1908), order XX, rule 2—Judgement—Judgement written by the Judge who heard the case after his transfer from the division and pronounced by his successor in office.

A Judge may pronounce a judgement written but not pronounced by his predecessor in office, and this notwithstanding that at the time the judgement was written the Judge who wrote it had ceased to be the Judge of the court in which the case was tried. *Satyendra Nath Ray Chaudhuri v. Kastura Kumari Ghatalin* (1) followed.

THIS was a claim for compensation under the Land Acquisition Act. The claimant had been allowed Rs. 7,900 out of a much larger sum demanded and appealed as to the balance. The only point in the case material for the purposes of this report was that the judgement had been written by the Judge who tried the case after he had made over charge as judge of the particular judicial division, and was pronounced by his successor in office. On these grounds it was contended in appeal that the judgement was invalid.

Dr. *Satish Chandra Banerji*, for the appellant.

Mr. *A. E. Ryves*, for the respondent.

RICHARDS, C. J. and BANERJI, J.—This appeal arises out of a suit under the Land Acquisition Act. The property in respect of which the claim arises is situate in Allahabad, not far from the Muir Central College, for which institution it was acquired. The appellant has been awarded the sum of Rs. 7,900. In his appeal he claims a further sum of Rs. 32,000. There can be no doubt that if the appellant was the absolute owner of the property in dispute or even if he had a permanent interest therein subject only to the payment of Rs. 48-8-0 per annum to Government, he would be entitled to a considerably larger sum than has been awarded to him by the court below. We have considered the evidence, and we entirely agree with the court below that the appellant has not shown that he had any permanent interest in the plot. In our opinion his tenure amounted to no more than a tenancy from year to year.

We have been referred to *Nabu Kumari Debi v. Behari Lal Sen* (2), *Nanda Lal Goswami v. Atarmani Dasee* (3),

* First Appeal No. 388 of 1911 from decree of R. C. Tute, officiating District Judge of Allahabad, dated the 9th of September, 1911.

(1) (1908) I. L. R., 35 Calc., 756. (2) (1907) I. L. R., 34 Calc., 902.

(3) (1908) I. L. R., 35 Calc., 763.

Upendra Krishna Mandal v. Ismail Khan Mahomed (1) and *Niratan Mandal v. Ismail Khan Mahomed* (2). All these cases were decided upon their own facts and circumstances and are quite different from the present case.

In the view we take of the nature of the appellant's tenure, we cannot say that the compensation awarded him by the court below was erroneous. It has been contended that the judgement of the court below and the decree founded thereon are bad because the judgement was written by Mr. Tute after he had ceased to be the District Judge of Allahabad. The judgement, no doubt, was so written and it was delivered by his successor. We think the mere fact that Mr. Tute had ceased to be the District Judge, when he wrote the judgement, is not sufficient to vitiate the judgement. Order XX, rule 2, provides that a Judge may pronounce a judgement written but not pronounced by his predecessor. In the Full Bench case of *Satyendra Nath Ray Chaudhuri v. Kastura Kumari Ghatwabin* (3) the Calcutta High Court held that a judgement written ten months after the Judge had ceased to have jurisdiction in the particular division was good and fulfilled the conditions of the corresponding section of the Code of Civil Procedure then in force.

It has been further argued that the award is without jurisdiction because Government claimed an interest in the property as well as the appellant. We do not think that there is any force in this contention. It can hardly be said that if land was in the occupation of a lessee under a lease from Government for fifty years, ten years of which had expired when the property was wanted for some public purpose, the property could not be acquired upon payment of compensation to the lessee for his interest in the unexpired term. If this be so, there is no difference in principle in the present case. If the appellant's interest is that of a tenant from year to year, he is entitled to compensation for the period that could elapse before he could be turned out and also for reasonable compensation for the buildings which are situate on the land.

In our opinion the appeal fails, and we accordingly dismiss it with costs.

Appeal dismissed.

(1) (1904) I. L. R., 32 Calc., 41.

(2) (1904) I. L. R., 32 Calc., 51.

(3) (1908) I. L. R., 35 Calc., 756.

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