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common form, and we cannot be surprised that, even so late as forty years ago, this common form was not in general use. The Subordinate Judge has observed that, if the gift was to the sons and grandsons as well as to Lakshmi Das, the word "and" would probably have been inserted between 'sons' and 'grandsons,' and the words "&c." would have been omitted. There is, to my mind, much force in this comment, and I think there can be no doubt that the words actually used are words of inheritance, and that an absolute estate was conferred on Lakshmi Das. I am confirmed in this view by the provisions in the subsequent paragraphs, in which further dispositions of property are made in favour of the widow and Lakshmi Das without any mention of his sons and grandsons.

For the reasons above stated, I agree that the appeal fails and must be dismissed with costs.

S. C. G. *Appeal dismissed.*

PRIVY COUNCIL.

GOKUL MANDAR.

v.

PUDMANUND SINGH.

P.C.*
1902
June 10.
July 9.

[On appeal from the High Court at Fort William in Bengal.]

Bengal Tenancy Act (VIII of 1885) s. 5, cl. 5—Tenure-holder—Decision of Revenue Officer in settlement proceedings under Chapter X of the Act —Res judicata—Subsequent suit in Civil Court for ejectment—Civil Procedure Code (Act X of 1877) and (Act XIV of 1882) s. 13.

The Bengal Tenancy Act (VIII of 1885) s. 5, cl. 5, enacts that "where the area held by a tenant exceeds 100 standard bighas, the tenant shall be presumed to be a tenure-holder, until the contrary is shown."

Held (affirming the judgment of the High Court) that the defendant was presumably a tenure-holder within the section, and that the evidence in the case did not show the contrary. The defendant was consequently liable to ejectment.

With reference to a contention raised as to whether, a decision in previous proceedings under the Bengal Tenancy Act, that the defendant was a tenure-

* *Present*:—LORD DAVEY, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.

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holder, was *res judicata* in a suit for ejectment in the Civil Court, where the first Court had held that it was not *res judicata*, but the High Court had not decided the point, the Judicial Committee, without deciding the question, observed, that under s. 13 of the Civil Procedure Code, a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit, unless the Judge, by whom it was made, had jurisdiction to try and to decide not only the particular matter in issue, but also the subsequent suit itself, in which the issue is subsequently raised. In this respect the enactment goes beyond s. 13 of the previous Act X of 1877 and also beyond the law laid down in *The Duchess of Kingston's case* (1). The essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction.

APPEAL from a decree (30th July 1897) of the High Court at Calcutta, which reversed with costs a decree (17th August 1895) of the Subordinate Judge of Monghyr, by which the respondents' suit was dismissed.

The defendants appealed to His Majesty in Council.

The subject-matter of the suit was a tract of land measuring 1,174 bighas in the district of Monghyr. This land, together with other land adjacent to it, was, before 1881, held by the Government as part of the Government khas mehal Binda diara, to which Government claimed it had accreted after diluvion. On 7th November 1881 the Government granted a lease of the land (and other land adjoining it) to Gokul Mandar, the first defendant (who was joint with Peary Mandar, the second defendant), until the end of April 1893, at a rent of 5 annas a bigha, and the defendants accordingly held possession of it under that lease.

Whilst they were so in possession, the plaintiffs on 28th June 1894 filed their plaint in the present suit, alleging that the land originally formed part of their village Patpar Madhopore, and had after diluviation and reformation been taken possession of by Government as an accretion to the Government estate of Binda diara; that in 1884-85 the Government had, on the application of the plaintiffs, relinquished the land to the plaintiffs as being a reformation of their estate of Patpar Madhopore; but as the defendants were then still in possession of the land under

(1) (1776) 2 Smith's L. C. 10 Ed. 713.

the lease of 1881, the plaintiffs had not obtained direct possession of it; that on the occasion of a settlement made in 1888-89 under the Bengal Tenancy Act (VIII of 1885), the defendants had endeavoured to have their jote right recorded in the settlement proceedings in respect of the disputed land, but had been unsuccessful in the Settlement Court, before the Special Judge, and in the High Court, and that the defendants were precluded by such proceedings from now setting up any jote right in the land; that the plaintiffs had on 29th October 1892 served on the first defendant a notice requiring him to surrender the land from the beginning of May 1893, which notice had been disregarded; that, on the expiry of the defendants' lease, the plaintiffs had let the land to tenants, who had entered upon it and held possession by sowing and reaping crops until September 1894, when in consequence of Criminal proceedings taken by the first defendant, the Magistrate of Monghyr made an order (16th June 1894) binding over the plaintiffs not to interfere with the defendants' possession and referring them to the Civil Court.

The plaintiffs prayed for a decree, declaring that the defendants were in possession as tenure-holders under the lease of 1881, until the end of April 1893; that they had no rights of occupancy in the land, and might therefore be ejected; and that the plaintiffs were entitled to possession of it.

The defence was that the lease which the defendants obtained in 1881 was a ryoti or cultivating lease, and under it the defendants had cultivated the land by themselves or their partners; that the settlement proceedings did not decide, so as to bind the first defendant, the question as to whether or not he was a ryot of the land; that he had acquired a right of occupancy in such land and could not be ejected; and that the plaintiffs had acknowedged him to be a ryot by taking rent from him and giving him receipts in that character.

The second defendant set up the same defence, and stated further that he was not a party to the settlement proceedings, and that they therefore did not bind him.

The Subordinate Judge held that the decision of the Settlement Officer in the proceedings under Chapter X of the Bengal Tenancy Act was not *res judicata* under s. 13 of the Civil

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Procedure Code, inasmuch as the Settlement Officer would have had no jurisdiction to try the present suit. He found, however, that the defendants were not tenure-holders, but ryots, and that they had acquired a right of occupancy in the land and could not be ejected. He therefore dismissed the suit.

On an appeal by the defendants the High Court (O'KINEALY and RAMPINI, JJ.) reversed that decision and gave the plaintiffs a decree.

The material portion of their judgment was as follows:—

"Under the Bengal Tenancy Act, the presumption is that any person holding more than a hundred bighas of land is to be considered a tenure-holder and not a ryot. Of course, this presumption can be rebutted; but the onus lies on the defendant in this case. It is hardly conceivable to any one knowing the revenue-settlement business in this country that Government would let out nearly 4,000 bighas of land, if not more, to any person for the purpose of cultivation by himself or by the members of his family, or by hired servants, or with the aid of partners. There exists no machinery in this country for such extensive cultivation, except in the case of some indigo concerns.

"The oral evidence given on behalf of the plaintiffs and defendant seems entitled to very little weight. But there is one witness, Ram Pershad Lal, not connected with either side, but a Government putwari of Binda diara, whose evidence seems reliable. He shows that the defendant originally got 6,000 bighas. The diara seems to have been divided into north and south diara, and from his evidence, taken with the report of the Court amin, it appears clear that the land in suit lies in the south diara, while the defendant claimed to have it farther north, in the boundary given on the pink line in the map. As to the condition of the land, the witness Ram Pershad Lal said that the defendant had 800 bighas of jote and he had also 100 ryots under him. The manner in which the defendant dealt with the land, sub-letting it to such a considerable extent, is also antagonistic to the idea that the land was let out to him as a ryot, and we think the evidence of the defendant, so far as it relates to the position of the land, is manifestly false.

"Then, it is said that the pottah obtained in 1881 shows that the defendant was then considered to be a ryot. The pottah was given on a printed form as far back as 1881, and the words 'ryot,' 'village,' 'mehal,' 'pergunnah' and 'district' are printed in the form, and at foot of the form there is a note which runs thus:—'Here is to be inserted that the rent of the talook which ought to be paid has been assessed by some Court in settlement proceedings, or it has been fixed by private arrangement or in any other way.' We have therefore two things, more or less discrepant, in the document, which apparently might be used either in regard to a ryoti tenure or in regard to a tenure in the nature of a talook.

"It has also been said that even up to 1892 the plaintiffs themselves admit having treated the defendant as a ryot. There is indeed a receipt (exhibit A10) which shows that in that year the collecting officer of the Raja of Baneli gave the defendant a receipt on which he is described as a ryot. This receipt is also in a printed form; but the fact that the defendant is there described as a ryot is of little value, for immediately before the plaintiffs had issued a notice treating him as a tenure-holder and directing him to quit the land.

"On the whole, therefore, we disagree with the Subordinate Judge in the conclusion he has arrived at, and we concur in the opinion expressed by the Settlement Officer and the Special Judge in the previous proceedings. We think that the evidence in this cause does show that the defendant is a tenure-holder and not a ryot, and he should therefore be ejected. It is not necessary for us to give any opinion on the other points raised.

"We therefore decree the appeal, and, setting aside the decree of the Lower Court, direct that a decree be entered up in favour of the plaintiffs for possession of the land in suit and for *mesne* profits with costs in both Courts."

Phillips and *De'Gruyther* for the appellants contended that they were ryots, and that the High Court were wrong in finding them to be tenure-holders. Their decision was based on the ground that the area of land held by them was more than 100 bighas, and the presumption was that they were therefore tenure-holders under the Bengal Tenancy Act, s. 5, cl. 5, but that Act was not in force at the time their lease was granted (in 1881), so that their status cannot be decided on that enactment. Even if it could, the presumption was rebutted by the evidence which showed them to be ryots. The Act in force in 1881 was the Bengal Act VIII of 1869, s. 2 of which defines a farmer or ryot. The fact that the land is let for the purpose of cultivation and is cultivated is the test of the tenant being a ryot, whatever the size of the area of land leased—*Durga Prosunno Ghose* v. *Kali Das Dut* (1) and *Laidley* v. *Gour Gobind Sarkar* (2). The receipts for rent given to them, which are in the form usually granted to ryots and not to intermediate holders, describe the appellants holding as a "jote" and themselves as being "ryots," showing that both the Government and afterwards the plaintiffs recognized them as holding in that character. If they are "ryots," the right of occupancy follows as a matter of law under s. 178 of the Bengal Tenancy Act, as they have held the land for more than 12 years consecutively.

(1) (1881) 9 C. L. R. 449. (2) (1885) I. L. R. 11 Calc. 501.

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As to the question of *res judicata*, the decision in the proceedings under the Bengal Tenancy Act is not binding on the appellants. The second appellant was not a party to them. The Settlement Officer, who decided those proceedings, was not a Court competent to try the present suit, and the appellant Gokul Mandar is therefore not debarred from raising the question of his status by s. 13 of the Civil Procedure Code—*Gokul Sahu* v. *Jodu Nundun Roy* (1), *Har Charan Singh* v. *Har Shankar Singh* (2), *Misir Raghobardial* v. *Sheo Baksh Singh* (3), *Durga Churn Law* v. *Hateen Mandal* (4), and the Bengal Tenancy Act (VIII of 1885), ss. 144, 152, and 158 were referred to.

Mayne and *C. W. Arathoon* for the respondents (called upon only as to the question of *res judicata*) contended that the question whether the appellant Gokul Mandar was a tenure-holder or a ryot was directly in issue between the parties in the settlement proceedings, and that the decisions in those proceedings should be held to be *res judicata*. The Bengal Tenancy Act intended to make the Settlement Officer the competent authority to decide all questions arising under Chapter X of the Act. Bengal Tenancy Act, ss. 101, 102, 106, and 111 were referred to. The record of rights was intended by the Legislature to be conclusive in all the Courts: see s. 109 of Bengal Act III of 1898, which amends the Tenancy Act and makes the decision of the Settlement Officer final, and not subject to be interfered with by other Courts. The case comes strictly within s. 13 of the Civil Procedure Code, and the appellant cannot raise the same question in this suit.

Phillips in reply cited *Peary Mohun Mukherji* v. *Ali Sheikh* (5), *Pandit Sardar* v. *Meajan Mirdha* (6), and *Secretary fo State for India* v. *Nitye Singh* (7).

(1) (1890) I. L. R. 17 Calc. 721.
(2) (1894) I. L. R. 16 All. 464.
(3) (1882) L. R. 9 I. A. 197, 203. I. L. R. 9 Calc. 439, 444.
(4) (1901) I. L. R. 29 Calc. 252.
(5) (1892) I. L. R. 20 Calc. 249, 251.
(6) (1893) I. L. R. 21 Calc. 378.
(7) (1893) I. L. R. 21 Calc. 38.

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The judgment of their Lordships was delivered by

Lord Davey. This is an appeal against a decree of the High Court of Calcutta, dated the 30th July 1897, reversing the decree of the Subordinate Judge of Monghyr, dated the 17th August 1895. The subject-matter of the litigation is a tract of land measuring 1,174 bighas, situate in the village of Patpar Madhopore, of which the respondents (plaintiffs of the first part) are proprietors. The other respondents (plaintiffs of the second part) are persons in whose favour a tenure of some sort has recently been created by the proprietors. The real and only question on this appeal is whether the appellant Gokul Mandar became a "tenure-holder" only or a "ryot having a right of occupancy" in the land in question within the meaning of the Bengal Tenancy Act, 1885.

The facts of the case may be shortly stated.

In and prior to 1881 the Government claimed to be proprietors of the lands in question with other lands adjacent thereto as an accretion after diluvion to the Government khas mehal Binda diara; and on the 7th November 1881 the Government granted to the appellant Gokul Mandar 3,668 odd bighas, including the lands in question at a rent of five annas a bigha, until April 1893. The kabulyat executed by the said appellant was on a printed form, in which it was described as "Form of kabulyat for those cultivators, who have not been recognised as having occupancy rights," but, on the other hand, the holding was described in a note as a "talook." On the 3rd September 1885 the Government, on the recommendation of the Commissioner of the Bhagulpore Division, released the 1,174 bighas to the predecessor in title of the first respondents as part of the Raj Baneli and Srinugger estates, and (it is agreed) the appellant Gokul Mandar thereupon became tenant thereof to the Rajah on the terms mentioned in the kabulyat. In 1888 proceedings were commenced under Chapter X of the Bengal Tenancy Act, 1885, for a survey and record of rights in village Patpar Madhopore, and in the course of those proceedings a question arose as to the status of the appellant Gokul Mandar in respect of the 1,174 bighas. The Assistant Settlement Officer directed the appellant's name to be entered as

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a tenure-holder, and his decision was affirmed on appeal by the District Judge of Bhagulpore, acting as the Special Judge under the Act, and again by the High Court.

The first respondents served the appellant Gokul Mandar with a notice to quit on the expiry of his term at the end of April 1893. After that date there were the usual disputes as to possession before the Magistrate, and ultimately the present suit was commenced by the respondents against the appellants, the second appellant being joint in property with Gokul Mandar. By their plaint they asked for judgment (1) that the decision passed by the Settlement Department had become final, (2) alternatively for a decision that the appellants had no occupancy right in the land, and (3) for possession.

The Subordinate Judge held that the Settlement Officer's award, although it had the effect of a Civil Court decree, could not be used as *res judicata* in an original suit cognisable by that Court alone, and he found on the evidence before him that the appellant Gokul Mandar was a ryot with a right of occupancy. The suit was therefore dismissed with costs. The learned Judges in the High Court disagreed with the Subordinate Judge, and held that the evidence showed that the defendant Gokul Mandar was a tenure-holder and not a ryot, and the defendant should therefore be ejected. They added: "It is not necessary for us to give any opinion on the other points raised."

Their Lordships agree with the decision of the High Court and with the reason given for it by the learned Judges. They do not attach any importance to the mere form of the kabulyat or to the use in it either of the word "cultivator" or of the word "talook." It is only another instance of the usual mistake of using a printed form for a purpose, to which it was not adapted. Nor does the receipt for rent given by the Rajah on the 30th November 1893, in which the appellant Gokul Mandar is described as "ryot," carry the matter any further. Prior to that date, as pointed out by the Judges, the Rajah had served a notice to quit, treating the appellant as tenure-holder. It is a question of substance, not of form. By s. 5 (5) of the Bengal Tenancy Act, 1885, it is enacted that, where the area held by a tenant exceeds

one hundred standard bighas, the tenant shall be presumed to be a tenure-holder, until the contrary is shown. In this case the grant to the tenant was of 3,688 odd bighas, and adopting the view of the evidence expressed by the High Court, their Lordships think the contrary has not been shown.

The appeal therefore fails on the merits, and it is not necessary for their Lordships to decide whether the decision of the Revenue Officer can be pleaded as *res judicata* on the issue as to Gokul Mandar's status. They will only observe in reference to arguments addressed to them that under s. 13 of the Civil Procedure Code a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit, unless the Judge, by whom it was made, had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit itself, in which the issue is subsequently raised. In this respect the enactment goes beyond s. 13 of the previous Act X of 1877, and also, as appears to their Lordships, beyond the law laid down by the Judges in the *Duchess of Kingston's* case (1). They will further observe that the essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction.

They will therefore humbly advise His Majesty that the appeal be dismissed, and the appellants will pay the costs of the respondents, who have appeared.

Appeal dismissed.

Solicitors for the appellants: *Watkins and Lempriere.*

Solicitors for the respondents: *T. L. Wilson & Co.*

J. V. W.

(1) (1776) 2 Smith's L. C. 10th Ed. 713.