Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

NARAIN MULLICK
v.
BADI ROY.*

1901
May 15 *&*
June 6.

Ghatwali tenure—Grant of permanent lease by ghatwal—Jungleburi lease—Bengal Tenancy Act (VIII of 1885) s. 5, cl. 5—Presumption of tenure.

In the absence of special circumstances, a ghatwal is, as a general rule, not competent to grant a lease of the tenure in perpetuity, and his successors are not bound to recognise such an incumbrance.

THE plaintiffs, Narain Mullick and others, appealed, to the High Court.

The appeal arose out of an action for recovery of possession of some jungle lands, by establishment of title thereto, and for recovery of the value of trees cut away by the defendants. The plaintiffs alleged that the lands in dispute formed part of a permanent jungleburi tenure held by them under two registered pottahs, for over twelve years. It was alleged that the property appertained to the chakran lands of two sets of ghatwals; that the father of some of the plaintiffs took a permanent lease in 1878 of 4 annas of the ghatwali lands from the father of the defendant No. 2, one of the present ghatwals; that some of the other plaintiffs themselves and the father of the remaining plaintiffs took a permanent lease in 1877 of 12 annas of the said lands from one Madhab Roy, one of the present ghatwals and the predecessors of the remaining ghatwals, the entire grant comprising 300 bighas of land; and that the defendants had forcibly dispossessed the plaintiff, by cutting down trees from the lands in dispute.

Those of the defendants, who appeared, contended that they were not bound by the acts of their predecessors, assuming that they had given any leases, and raised other pleas in defence, the

* Appeal from Appellate Decree No. 1084 of 1899, against the decree of K. N. Roy, Esq., Offg. District Judge of Bankura, dated the 18th March 1899, reversing the decree of Babu Khetter Mohun Mitter, Munsif of Bankura, dated the 27th of November 1897.

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defendant Madhob Roy adding, that although the pottahs and kabulyats were executed, they were not exchanged and the plaintiffs and their predecessors never obtained possession, the Collector having interfered and fined some of the lessors for granting leases which they had no authority to grant.

The Munsif held that the plaintiffs had acquired a right of occupancy in the lands in dispute and decreed the suit.

On appeal by the defendants, the District Judge held that the ghatwals had no right to grant perpetual leases, and that the plaintiffs could not acquire a right of occupancy in the lands in dispute. He accordingly dismissed the suit.

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Babu Digamber Chatterjee and *Babu Khetra Mohan Sen* for the appellants.

Babu Shoshi Shekhor Bose for the respondents.

Cur. adv. vult.

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AMEER ALI AND PRATT JJ. In the years 1284 and 1285 the plaintiffs leased from the ghatwals of mouza Aljhara a chak principally consisting of jungle, which is said to contain 300 bighas of land. One lease was from the ghatwals of a 4 annas share, the annual rent being fixed in perpetuity at Rs. 4-12, the other lease was from the ghatwals who owned the remaining 12 annas share, the fixed rent being Rs. 10 and a bonus of Rs. 36 having been paid.

The plaintiffs, alleging that they had been dispossessed of 50 bighas of the property by the present ghatwals, sued for Rs. 55, damages for trees cut and for recovery of possession of the said lands, in which they alleged that they had a permanent title, and had also acquired a right of occupancy.

The Munsif held that the holding was ryoti, and that the plaintiffs had acquired a right of occupancy. On appeal by the defendants, the learned District Judge held that the leases created permanent tenures in derogation of the rights of succeeding ghatwals and were invalid against them. Referring to the nature of the holding he says: "It has been argued, and also asserted in page 2 of the plaint, that the lease shows that it was a jungleburi tenure, the grant being made for reclaiming purposes.

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The grant is for 300 bighas of land and the lease enjoins that the holder should clear jungles, settle raiyats on it, and also cultivate; the evidence is that some Santhals have been settled on a portion of the land, some jungles have been cleared by cutting woods, and one of the plaintiffs admits that the khas cultivation is almost *nil*. Such a tenure can hardly be considered as a cultivating lease or raiyati tenure; * * * * and having regard to s. 5 of the Bengal Tenancy Act, I have no doubt that the leases in this case created tenures and not raiyati holdings. The plaintiffs could not therefore acquire any right of occupancy in the jungle in dispute" The District Judge accordingly dismissed the suit.

In second appeal it has been contended (1) that on a proper construction of the leases it should have been held that they were cultivating leases and that the plaintiffs have acquired a right of occupancy; (2) that the Lower Appellate Court is wrong in holding that the ghatwals of Bankura cannot grant permanent jungleburi leases. As regards the first contention we start with the presumption of law that the leases being for more then 100 bighas, the tenant is a tenureholder, until the contrary is shewn. There is nothing in the terms of the leases or in the facts found by the District Judge and which we have already mentioned, regarding the manner of reclamation, to shew that the presumption has been rebutted, and we think that the Lower Court has rightly decided that the leases were of a tenure and not of a raiyati holding.

We next come to the important question whether ghatwals are competent to grant permanent jungleburi leases.

Ghatwali tenures were created by the Mahomedan Government in order to provide both a police and a military force to watch and guard the passes on the western frontier of Bengal against the invasions of lawless hillmen and others. It thus became a necessary incident of such tenures that they should be incapable of alienation, so that their profits might remain unimpaired for each succeeding ghatwal and thus enable him to render the full and efficient service expected of him. But while conceding that a ghatwal could not entirely alienate his tenure it is contended

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that he might grant a permanent lease with the view of reclaiming jungle, and bringing into profitable cultivation what might otherwise remain waste and unprofitable. Reliance is placed on the case of *The Deputy Commissioner of Beerbhoom* v. *Rungo Loll Deo* (1) and of *Davies* v. *Debee Mahtoon* (2). In both these cases the lessee from the ghatwals had been in possession without objection for sixty years or more. In the former case he had been dispossessed arbitrarily and it was held that he must be restored to possession and the ghatwal might sue to set aside the lease and show that it was not granted *bona fide*. In the second case the Court expressly guarded itself from coming to any final opinion upon the proposition whether a ghatwal must be presumed from the very nature of his tenure to have no right to grant a mukuraree lease. MITTER J., in delivering judgment, observed: "It is enough for the purposes of this judgment to say that the nature of the lease, the uninterrupted possession for no less than 69 years held under it, the condition of the District (Bhagulpore) in which the lands covered by it are situated, the obscurity still hanging about the precise nature of the ghatwali tenures of that District, regarding which no legislative enactment has yet been passed, and lastly, the total absence of any objection or protest on the part of the plaintiff's lessor and his predecessors against the creation of such tenures, which appear to be pretty numerous in that part of the country, are in our opinion sufficient to raise a strong presumption in favour of the validity of the mukuraree title set up by the defendant."

It has not been shown that there are any special circumstances in the present case which would entitle the plaintiffs to equitable relief. It does not appear why the plaintiffs could not have profitably cleared the jungle by taking a lease for a term of years. It was *prima facie* a very extreme measure for the ghatwals to let out some 300 bighas of land at a total rent of only Rs. 14-12 fixed in perpetuity. A considerable salami was taken by the lessors which *pro tanto* resulted in a reduced annual rent to the detriment of future ghatwals, who might succeed to the interest of the lessors. We are by no means satisfied that there was any real necessity for adopting such a

(1) (1862) W. R. F. B. 34. (2) (1872) 18 W. R. 376.

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course, which shut out future ghatwals from all the benefits of present and future improvements and only gave them a small quit rent which was expressly declared to be not capable of enhancement. That as a general principle a ghatwal is not competent to grant a lease in perpetuity and his successors are not bound to recognize such an incumbrance, was laid down by the learned Judges of this Court in the case of *Grant and the Court of Wards* v. *Bungshee Deo* (1). We find nothing in the circumstances of the case before us to take it out of the general rule which was propounded in that case. We must therefore hold that the mukuraree leases were invalid. It, however, appears that one of the three grantors of the lease of a 12 annas share, *viz.*, Madhab Roy, is still alive, being Defendant No. 7 and that he is still a ghatwal. The learned District Judge has held that as he alone could not grant a lease for 12 annas share and as his share in the ghatwali tenure is not known in this case, therefore the lease must be declared inoperative even as against him. We think that this must be so, especially as the lease is one and indivisible. What equities, if any, the lessees may have against Madhab Roy for recovery of a portion of the salami or otherwise is a question we are not now called upon to determine. In the result the appeal will be dismissed with costs.

M. N. R. *Appeal dismissed.*

Before Mr. Justice Rampini and Mr. Justice Pratt.

MOHENDRA NATH SARKAR

v.

BISWANATH HALDAR.*

1901 *December* 13.

Bengal Tenancy Act (VIII of 1885) s. 49, cl. (6)—Under-raiyat holding out under a written lease—Notice to quit, requisites of—Notice at the instance of the landlord signifying to the under-raiyat that the landlord has called upon him to quit the land, whether sufficient.

* Appeal from Appellate Decree No. 668 of 1900, against the decree of Babu Ram Gopal Chaki, Subordinate Judge of 24-Pergunnas, dated the 22nd of February 1900, reversing the decree of Babu Apurba Chandra Ghose, Munsif of Diamond Harbour, dated the 14th of August 1899.

(1) (1871) 15 W. R. 38.