1876

QUEEN v. BAIJOO LALL

IN THE MATTER OF THE PETITION OF BAIJOO LALL.

Judges should however bear in mind that criminal prosecutions are frequently suggested by successful litigants merely to prevent an appeal in the Civil suit; and they should be careful not to lend themselves to such suggestions too readily. They should also recollect that when they proceed under s. 471, the responsibility for the prosecution rests upon the Judge entirely; such a prosecution being a very different thing from a prosecution instituted on the complaint of a private party and merely sanctioned by the Court under s. 468.

Order quashed.

APPELLATE CIVIL.

Before Mr. Justice Markby and Mr. Justice McDonell.

1876
July 3.

RAM NEEDHEE KOONDOO (PLAINTIFF) *v.* RAJAH RUGHOO NATH NARAIN MULLO AND ANOTHER (DEFENDANTS).*

Declaratory Decree—Consequential Relief—Act VIII of 1859, *s.* 15—*Jurisdiction of Civil Courts.*

A granted a lease of his entire property to the plaintiff for a term of years, with power to enhance the rents and make settlements. Immediately after *A* executed a pottah in favor of *B*, covering a portion of the same estate, whereby *B's* rent was to remain unchanged for a period conterminous with the plaintiff's lease. In a suit by the plaintiff against *B* and *A's* representative to have the pottah set aside, it was objected that, inasmuch as the deed had not been as yet set up against the plaintiff, nor any injury shown to have been occasioned to him thereby, he had no cause of action: *held* that the suit was maintainable.

In laying down the rule that "a declaratory decree cannot be made, unless there be a right to consequential relief," the Privy Council did not intend to deny to the Courts of this country the power to grant decrees in any case in which, independently of the provisions of Act VIII of 1859, s. 15, they had the power to grant a decree. This power is generally the same as that of the Court of Chancery in England.

SUIT to set aside a pottah, dated the 1st Srabun 1280 (15th July 1873), executed by the late Rajah Bikramajit Mulla, zemindar, in favor of Suroop Mahto, the first defendant.

* Special Appeal, No. 385 of 1876, against a decree of the Judge of Zilla Midnapore, dated the 26th of February 1876, reversing a decree of the Officiating Munsif of that district, dated the 3rd of September 1875.

The plaintiff was a creditor of the late Rajah, who, in order to pay off his debts from the income of the estate, gave a lease of his entire property to the plaintiff for a term of fourteen years, commencing with the year 1280 (1873). The lease was dated the 22nd February 1872, and the jama fixed in it was Rs. 35,000. This document, among other conditions, contained stipulations to the following effect:—that the Rajah should have the jama fixed in the lease tested by *mukabulla*, or reference to ryots, within six months from the date thereof; that the lessee should possess the power of enhancing the rents, and the enhanced amount should be appropriated by him as his profit; and that, during the term of the lease he should have authority as complete as the Rajah himself, to make settlements in the zemindari, the only qualification being that such settlements should not be injurious to the reversionary interest of the zemindar.

Subsequently on the 1st Srabun 1280 (15th July, 1873), that is, after the lease had been several months in force, the Rajah granted to the first defendant, Suroop Mahto, the pottah which was sought to be set aside in this suit. The pottah in question recited that the subject-matter of the grant was formerly in the possession of the defendant under what was called a *Mondullee* (1) settlement; and that, owing to the condition for adjustment of jama contained in the plaintiff's lease, a fresh *mondullee* jote settlement was granted to the defendant on an enhanced malguzari, which should not be liable to further enhancement during the entire term of the pottah extending from 1280 to 1294 (1873—1887). The Rajah subsequently granted pottahs of a similar character to other parties covering the entire estate.

The plaintiff instituted the present suit against the second defendant (called the minor defendant in the judgment of the High Court) the grandson and representative of the late Rajah, and Suroop Mahto, to have the pottah set aside, alleging that it was executed collusively in detriment of his interests, and that the Rajah had no power to make any settlement during the

(1) The position of a *mondul* on this estate was stated to be that he collected the rents from the ryots, and paid the landlord the rate fixed by the pottah, taking on the risk of collection upon himself.

1876

RAM NEEDHEE KOONDOO v. RAJAH RUGHOO NATH NARAIN MULLO.

continuance of the lease by which the malguzari of the first defendant was made invariable, and not liable to enhancement by the plaintiff during the entire period of the ijara.

The first defendant pleaded, *inter alia*, that the plaint disclosed no cause of action; that inasmuch as there was no express allegation in it regarding the nature and extent of the loss incurred by the plaintiff, the suit was not maintainable; and that the pottah was granted in pursuance of the condition for adjustment in the lease.

On behalf of the minor defendant, Mr. Harrison, the Collector, representing the Court of Wards, submitted the matter to the Court, saying in his written statement, that, "if the pottahs granted to the ryot and jote monduls be held by the Court as contrary to the conditions of the lease and be on that account set aside, I have no objection thereto."

The Munsif found that the pottah was executed after the period within which the jama stated in the lease should have been tested by reference to ryots; that the grant of the pottah was no adjustment as understood by the parties; that the Rajah, finding that the mofussil collections were less than the jama fixed in the lease, entered into a collusive arrangement with his principal ryots, whereby, in consideration of their rents remaining unchanged for fifteen years, they undertook to take pottahs from him at a nominally higher rent; and that the pottah in question, if held valid, would nullify the terms of the lease. The Munsif accordingly decreed the plaintiff's suit.

The minor defendant appealed to the District Judge, making the first defendant, who did not appeal, a respondent. The lower Appellate Court set aside the Munsif's decree and dismissed the plaintiff's suit, holding that the pottahs were granted in conformity with the powers reserved to the Rajah by the lease, and that the plaintiff was bound to prove some substantial injury in order to maintain his action.

The plaintiff preferred a special appeal to the High Court, making both the defendants special respondents.

Mr. *Woodroffe* (Baboos *Bhowany Churn Dutt* and *Rash Behary Ghose* with him) for the appellant.

The *Advocate-General*, offg. (Mr. *Paul*) and the *Legal Remembrancer* (Mr. *Bell*) (the *Senior Government Pleader*, Baboo *Annoda Pershad Banerjee* with them) for the minor respondent.

Mr. *Woodroffe*.—The Judge is wrong in holding that the plaintiff has no cause of action. The Rajah, after he had executed the lease, had no power to make any settlement with his ryots. By the lease all such power was made over to the plaintiff. By the new settlements, the rents of the ryots have been made invariable, and not liable to enhancement for a period covering the term of the lease; the effect of which is to nullify the terms of the lease, authorizing him to enhance the rents. The plaintiff is entitled to maintain this suit, to have the pottah set aside and declared null and void as against him without proving special damage; Story's Eq. Jur., §§ 698. Distinct consequential relief is prayed for, and, therefore, under the Privy Council Rulings and the High Court decisions, the suit is maintainable. The following cases were cited—*Strimathoo Moothoo Vijia Ragoonadah* v. *Dorasinga Tevar* (1), *Thakoor Deen Tewarry* v. *Nawab Syed Ali Hossain Khan* (2), and *Joy Narain Giree* v. *Greesh Chunder Mytee* (3).

The *Legal Remembrancer* for the respondent.—The present suit is not maintainable; the plaintiff does not allege that any injury has as yet occurred to him, and therefore until the deed is set up against him or any actual damage is suffered by him, he has no cause of action. If the Rajah had no power to grant the pottah, it is a nullity. No person can derive any benefit from it. If it is void *ipso facto*, what is the suit for, and what is the cause of action? But as a matter of fact, the pottah was granted in compliance with the terms for adjustment contained in the lease. The Rajah no doubt had not the power to make new settlements; but this is not a *new* settlement. It was an arrangement really for the benefit of the lessee, and for the purpose of testing the

(1) 15 B. L. R., 83; S. C., L. R., 2 Ind. App., 169.
(2) 13 B. L. R., 427; S. C., L. R., 1 Ind. App., 192.
(3) 15 B. L. R., 172 (*n*).

1876

RAM NEEDHEE KOONDOO v. RAJAH RUGHOO NATH NARAIN MULLO.

mofussil collections. The pottah must, therefore, be held good. The plaintiff prays for a simple declaratory decree, and therefore his suit is not maintainable—*Sreenarain Mitter* v. *Sreemutty Kishen Soondery Dassee* (1), *Thakoor Deen Tewarry* v. *Nawab Syed Ali Hossain Khan* (2), *Strimathoo Moothoo Vijia Ragoonadah* v. *Dorasinga Tevar* (3), and *Sadat Ali Khan* v. *Khajeh Abdool Gunny* (4).

Mr. *Woodroffe* in reply cited the following cases:—*Howe* v. *O'Flaharty* (5), *Raja Nilmoney Sing Deo Bahadoor* v. *Kalee Churn Bhuttacharjee* (6), *Sheik Jan Ali v. Khonkar Abdur Kuhma* (7), *Maharajah Rajunder Kishwur Sing Bahadoor* v. *Sheopursun Misser* (8), and *Kamala Naicken* v. *Pitchacootty Chetty* (9).

The judgment of the Court was delivered by

MARKBY, J. (who, after shortly stating the facts, continued):—There can be no doubt whatever that under the ijara the plaintiff from the time the ijara term commenced, and whilst that term lasted, was, and is, the only person capable of granting a valid lease to tenants, or making any valid arrangement as to the collection of rents. The zemindar has granted to the plaintiff for fourteen years his zemindari, "together with the rights." There is nothing to show that the zemindar intended to retain to himself the power of making any settlements with the tenants or the monduls during the term; on the contrary it is expressly said—"You have during the term power as complete as my own to make settlements in the said zemindari," the only qualification added being that these settlements shall not be injurious to the Rajah's reversionary interest. It would require very clear words to qualify this express power, and there are no such words in the document.

(1) 11 B. L. R., 171.
(2) 13 B. L. R., 427; S. C., L. R., 1 Ind. App., 192.
(3) 15 B. L. R., 83; S. C., L. R., 2 Ind. App., 169.
(4) 11 B. L. R., 203.
(5) 9 Ir. Chan. Rep., 119.
(6) 14 B. L. R., 382; S. C., L. R., 2 Ind. App., 83.
(7) 6 B. L. R., 154.
(8) 10 Moore's I. A., 468.
(9) *Ibid*, 386.

[His Lordship then referred to the terms of the pottah, especially to the stipulation, whereby the first defendant's rent was to remain unchanged during the existence of the lease, and continued]:— This is a stipulation which the Rajah had no power whatsoever to make. Indeed, the Legal Remembrancer, who appeared in this Court for the minor defendant, has expressly abandoned the right to interfere between the ijardar and the tenants; and much unnecessary litigation might have been saved if this abandonment had been made earlier.

It is, however, argued for the minor defendant, that the late Rajah did not, by granting the lease, assume to exercise the power of making settlements with the tenants generally, but that by one of the clauses in the ijara lease, he was allowed six months to adjust the rent-roll, so as to show a mofussil jama of Rs. 35,000, and that, in pursuance of this understanding, the rent of the defendant, Suroop Mahoto, was adjusted within the time specified, and that the pottah granted to this defendant merely embodies the terms of the adjustment.

The answer to this is two-fold. First, what is here called the "adjustment" did not in fact take place within the time specified. The time specified in the ijara lease was the six months' interval between the execution of the ijara and its taking effect. Secondly, the Munsif has found that what was done was not any adjustment of the old payment but the fixing of a new payment, and this finding remains undisturbed; to which may be added that the clause, which this pottah contains prohibiting future enhancement, cannot possibly be called "adjustment." . . . . .

It was, however, said that, even if the Rajah had no power to make this settlement, either as zemindar or under the clause of the ijara lease requiring him to show a mofussil jama of Rs. 35,000, still this suit would not lie; that, in this view, the pottah sought to be set aside was a nullity, that it had not yet been set up against the plaintiff, and that he had been in no way injured by it.

With regard to the question of injury, there is no finding in this case that the plaintiff has as yet suffered any actual injury for which he could have claimed compensation in the way of

1876

RAM NEEDHEE KOONDOO v. RAJAH RUGHOO NATH NARAIN MULLO.

damages. But we entirely dissent from the argument on the part of the minor defendant, that the making of this pottah was beneficial to the plaintiff, or that it was executed with the object that it should be so. It is admitted now that the Rajah could not, at the end of the six months, show a rental of Rs. 35,000. By granting pottahs to the tenants, similar to the one in this case, he tried to raise the rental to the required amount, hoping thereby to escape the penalties which he incurred under the ijara lease. There can be little doubt that he prevailed upon the tenants to accept this advance on the old rents by offering them some kind of advantageous provision in the pottah granted. In the present case, the advantage held out to the tenant was that his rent should not be increased during the term. We think the assertion contained in the pottah that it was granted for the purpose of effecting a *mukabulla* was a mere pretence and rather a shallow one. We think this is what is meant by collusion in the plaint, and that to that extent it is (as found by the Munsif) established by the evidence.

It also seems to be clear that, although the right to make settlements with the tenants after ijara term commenced is not now asserted on behalf of the minor defendant, the plaintiff, upon coming to know that pottahs had been granted after that time, had a right to treat such a proceeding as a violation of his rights under the ijara, which, in my opinion, in fact it was. On the other hand, it was never expressly admitted in this case that this pottah was a nullity, until the close of that argument in this Court. It was in the first instance submitted to the Court to say whether it was or was not a valid document. Subsequently this attitude was departed from, and the validity of the pottah was strenuously asserted and maintained. The grounds upon which its validity was maintained have now been overruled.

Nor, as far as the minor was concerned, was any objection raised in the first Court to the suit being tried. On the contrary, Mr. Harrison said, "if the pottahs granted to the ryot and jote monduls be held by the Court as contrary to the conditions of the ijara pottah, and be on that account set aside, I have no objection thereto. But the ijara pottah, which has been

granted to the plaintiff, is not an ordinary ticca ijara pottah, and it is, therefore, difficult to give a reasonable interpretation to it. I, therefore, pray that the Court will be pleased to take into its consideration the undermentioned facts, in ascertaining what interpretation it is necessary to give to the plaintiff's ijara pottah, in order to pass a judgment on the pottahs granted to the ryots and jote monduls." In all probability Mr. Harrison thought it convenient for the minor that the question should be once for all determined.

It is also admitted that a very large number of pottahs have been granted under circumstances similar to the present, the validity of all of which is in dispute and must be determined in some way or other. It is certainly desirable that the power of the Rajah to grant these pottahs should be discussed and determined before the plaintiff takes proceedings against the tenants. There is every probability that, when this point is finally decided in one case, it will not be again litigated.

We advert to these circumstances to show that there are reasons why it is desirable to give in this suit a decree which will declare the rights of the plaintiff and the minor defendant respectively, and why it would be a hardship now to hold that the suit does not lie. We cannot, of course, give a decree, however desirable it may be in this particular case, if the law does not permit us to do so.

It is now the settled law that, in the Courts of this country, "a declaratory decree cannot be made, unless there be a right to consequential relief capable of being had either in the same Court or in certain cases in some other Court"—*Strimathoo Moothoo Vijia Ragoonadah* v. *Dorasinga Tevar* (1). But in laying down this rule, we do not understand it to have been the intention of the Privy Council to deny to the Courts of this country the power to grant decrees in any case, in which, independently of the provisions contained in s. 15 of Act VIII of 1859, these Courts have power to grant a decree. It is, therefore, necessary to see what that power is. Now, in this Court, the power is generally the same as that of the Court of Chancery in England. That was the power of the Supreme Court, and it is

(1) 15 B. L. R., 106.

1876

RAM NEEDHEE KOONDOO v. RAJAH RUGHOO NATH NARAIN MULLO.

continued to this Court. And I do not think there is any valid ground for holding that the Courts of the mofussil have a jurisdiction in this respect different from or less than that of this Court. At any rate, in the absence of all special provision or authority upon the subject, it would be difficult to suggest any other guide than the practice of the Court of Chancery in England, and according to the best information we are able to obtain the Court of Chancery in England would in such a case as this entertain the suit. The cases in the Privy Council also support this view. In the case of *Thakoor Deen Tewarry* v. *Nawab Syed Ali Hossain Khan* (1), the plaintiff, alleging himself to be in possession, obtained a decree to set aside a deed executed by a deceased person in favor of the defendant. The plaintiff claimed to be the heir of the deceased; the defendant, who was in possession, claimed to hold the property under the deed. The Privy Council say "the plaint prayed that the deed might be set aside, which is a prayer for substantive relief." In another recent case, the Privy Council said, speaking of the claim of the plaintiff in that suit, "his requisition of a declaration of a mâl title, by setting aside the false *brahmottra* title alleged by the defendants, is really no more than this, that he should have his title, whatever it was, as a zemindar, free from the allegation of the defendants that they had some other title. If he had applied to set aside a deed set up by the defendants impugning his ordinary title as zemindar, then relief might be granted to him by cancelling that deed; but he cannot obtain relief in the shape of merely setting aside an assertion, which for all that appears may have been merely by word of mouth" (2).

In *Maharajah Rajundur Kishwur Sing Bahadoor* v. *Sheopursun Misser* (3), the Privy Council dealt with the case of a tenant of a portion of a zemindari who set up against the zemindar a holding different from that which was his true holding, and it seems to be considered that this was an interference with the zemindar's possession for which a suit would lie. Their

(1) 13 B. L. R., 427; S. C., L. R., 1 Ind. App., 192.

(2) *Rajah Nilmoney Singh Deo.* v. *Kalee Churn Bhuttacharjee*, 14 B. L. R., 382.

(3) 10 Moore's I. A., 438.

Lordships say, "if this tenure be not interposed between the zemindar and the cultivators, the ordinary relation between him and them exists; but if it be interposed, the zemindar's general proprietary title to the collections is gone, and in lieu of it he is simply entitled to some jama from the mesne proprietors. It is obvious, then, that the assertion of such a title is a serious prejudice to a zemindar, and may materially interfere with the successful management of his zemindari. Such an intermediate tenure cuts off the possession, that is the zemindar's title to the rents and profits immediately derived from the cultivators" (1). In the earlier case of *Kamala Naicken* v. *Pitchacootty Chetty* (2), the facts were somewhat similar to the present. A zemindar, after granting to the plaintiff a lease of his zemindari, issued notices to the tenants not to pay the rents to the lessee. No other interference with the rights of the lessee appears to have taken place, and no actual refusal to pay rent appears to have been alleged. The High Court gave a decree, declaring that the plaintiff was entitled to specific performance of the lease and to the possession and enjoyment of the zemindari under the terms of the lease. The Privy Council did not approve of the declaration as to the specific performance, but affirmed the rest of the decree.

These cases appear to us to justify this Court in making a decree in this case.

The plaintiff has not asked for any injunction, though probably he might have done so, and only asks that the pottah should be set aside as against him. We think a decree substantially to that effect may be made. The decree of the lower Appellate Court dismissing the suit will therefore be set aside, and, instead thereof, there will be a decree in the following form:—that the pottah of 29th Srabun 1280 granted by the Rajah to the defendant No. 1 be as between the plaintiff and the defendants in this suit set aside, and the plaintiff declared entitled to the possession and enjoyment of the zemindari under the terms of the ijara lease of the 12th Falgoon 1279 the aforesaid pottah notwithstanding.

Appeal allowed.

(1) 10 Moore's I. A., 449.

(2) 10 Moore's I. A., 386.