

Before Mr. Justice Geidt and Mr. Justice Mookerjee.

MAHANANDA CHAKRAVARTI

v.

MONGALA KEOTANI.*

1904

July 5.

Jurisdiction—Revenue Court—Rent of tank, suit for—“Land”—Fishery, right of—Act X of 1859, ss. 6, 23, cl. (4).

A suit for recovery of arrears of rent of a tank, which is not a part of an agricultural holding, but is used for rearing and preserving fish, is not maintainable in a Revenue Court, the provisions of Act X of 1859 not being applicable to such a suit.

The term “land” in s. 6 of Act X of 1859 means cultivated land, and does not include a tank regarded as land covered with water.

Siboo Jelya v. Gopal Chunder Chowdhry(1), *Nidhi Krishna Bose v. Ram Doss Sen*(2), *Nidhee Kristo Bose v. Nistarinee Dossee*(3), and *Doorga Soonduree Dossee v. Oomdutoonissa*(4) referred to.

Seemle: Where the grant is merely of a right of fishery, the lessee acquires no interest in the sub-soil, nor is he entitled to retain possession, when the water dries up.

Duke of Somerset v. Fogwell(5), *Suroop Chunder Mozoomdar v. Jardine, Skinner & Co.*(6), *Bessen Lal Dass v. Khyrunnissa Begum*(7), *Munohar Chowdhry v. Nursingh Chowdhry*(8), *Radha Mohun Mundul v. Neel Madhub Mundul*(9), and *David v. Grish Chunder Guha*(10) referred to.

SECOND APPEAL by Mahananda Chakravarti, the plaintiff.

The plaintiff instituted this suit in the Court of the Deputy Collector of Manbhum, under s. 23, cl. (4) of Act X of 1859,

* Appeal from Appellate Decree, No. 1383 of 1902, against the decree of R. R. Pope, Judicial Commissioner of Chota Nagpur, dated May 6, 1902, affirming the decree of Ram Niranjana Prosad, Deputy Collector of Manbhum, dated July 17, 1901.

(1) (1873) 19 W. R. 200.

(2) (1873) 20 W. R. 341.

(3) (1874) 21 W. R. 386.

(4) (1872) 18 W. R. 235.

(5) (1826) 5 B. & C. 875;

29 W. R. 449.

(6) (1863) 1 Marsh. 334.

(7) (1864) 1 W. R. 79.

(8) (1869) 11 W. R. 272.

(9) (1875) 24 W. R. 200.

(10) (1892) 1 L. R. 9 Calc. 183.

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for recovery of rent of a tank, called Perka Bandh, within the jurisdiction of the Municipality of Purulia. He obtained a settlement from the municipality in respect of this tank for a term of five years, and granted a sub-lease to the defendant Mongala Keotani, a fish-woman by profession, for five years (1303 to 1307 B. S.) under a registered *kabuliat*, on a *jama* of Rs. 72 per annum ; one of the several conditions of the sub-lease being that the defendant would continue to be liable for the rent irrespective of any inundations, drought, non-rearing of fish, &c., and that she would not get any remission in the amount of rent on any of those pleas. The defendant paid only Rs. 39 out of the rent due for the years 1303 to 1305 B. S., but failed to pay the balance, for the recovery of which the plaintiff instituted this suit in the Revenue Court.

The defendant pleaded, *inter alia*, that the suit was not maintainable in the Revenue Court, as it did not come within the purview of Act X of 1859 ; that it was triable only by the Civil Court ; that the plaintiff granted her a settlement for the purpose of holding and enjoying the tank by rearing and catching fish, &c., therein, and the defendant reared a large quantity of spawn of fish at great expense, but the municipality had the water of the tank drained out in 1305 by cutting an *arh* (channel) as the water had become offensive, and the plaintiff could not give her possession of the tank as before, and he himself caught and took away all the fish reared by the defendant, and therefore she was not liable for the rent.

The Deputy Collector held that the provisions of Act X of 1859 was not applicable to the case, and that it was triable only by a Civil Court ; and he dismissed the suit on that preliminary ground, relying on the decision of Birch J. in *Nidhee Kristo Bose v. Nistarinee Dossee*(1), that the provisions of Act X of 1859 are not applicable to tanks, which are not appurtenant to any *rayati* holding.

On appeal, the Judicial Commissioner of Chota Nagpur affirmed the judgment of the Deputy Collector.

The plaintiff now appealed to the High Court.

(1) (1874) 21 W. R. 386, 388.

Babu Digambar Chatterjee for the appellant. The suit is for arrears of rent due on account of a right of fishery and is therefore within the purview of cl. 4, s. 23 of Act X of 1859, and cognizable by a Revenue Court: See *Puran Santra v. Shaikh Tajosdeen*(1), *Allum Chunder Shaha v. Bhurati Baboo*(2), and *Koylash Chunder Dey v. Joy Narain Jalooah*(3). A tank is land covered with water, and a suit for rent of such "land" comes under cl. 4, s. 23 of the Act.

Babu Nalini Ranjin Chatterjee for the respondent. The lease of the tank is not a lease of fishery. The term "fishery" is not defined in Act X of 1859. It is defined in the dictionary as a "right to catch fish in a certain place and in particular waters;" it is therefore an incorporeal right; a person having a right of fishery has no right to the sub-soil: see the Full Bench case of *Fadu Jhala v. Gour Mohun Jhala*(4). But in the present case the lease conferred a right to the entire tank. A mere right to fishery is not the same as a right to a tank, and therefore the cases relied upon by the other side are distinguishable from the present one. A Revenue Court may entertain a suit for arrears of rent due on account of land, rights of pasturage, fisheries, &c., under s. 23 of Act X of 1859, but not on account of any and every kind of land. The word "land" in that section does not contemplate the sub-soil of a tank; it evidently refers to lands used for agricultural purposes or *rayati* lands: *Nidhee Kristo Bose v. Nistarinee Dossee*(5), *Ranee Doorga Soonduree Dossee v. Bitee Oomdutoonissa*(6). The following cases were also referred to in the course of the argument: *Kalee Mohun Chatterjee v. Kalee Kisto Roy*(7), *Ramdhun Khan v. Haradun Paramanick*(8).

Babu Digambar Chatterjee in reply. The present suit is for rent due on account of a tank used only for rearing and catching fish by the defendant. The word "fishery" is not defined, and we must therefore take its ordinary definition as given in the dictionary, *i.e.*, "the right to take fish at a certain place or in

(1) (1866) 5 W. R. (Act X R.) 20.

(5) (1874) 21 W. R. 386.

(2) (1866) 5 W. R. (Act X R.) 92.

(6) (1872) 18 W. R. 235.

(3) (1867) 7 W. R. 93.

(7) (1869) 11 W. R. 183.

(4) (1892) I. L. R. 19 Calc. 544.

(8) (1869) 12 W. R. 404.

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particular waters:" see Webster's Dictionary. Section 23 of Act X of 1859 provides that "suits for rent on account of any rights of fisheries or the like shall be cognizable by the Collectors of land-revenue, and tried under the provisions of the Act." The term fishery would necessarily include a river, lake, tank, &c., and some meaning ought to be attached to the words "or the like." It is submitted, therefore, that the Revenue Court has jurisdiction to try a suit like the present.

Cur. adv. vult.

GEIDT AND MOOKERJEE JJ. On the 22nd July 1896, the plaintiff executed in favour of the defendant, a fisher woman by caste and profession, a lease of a tank. The terms of the lease, so far as they are material for the purposes of the present appeal, were as follows :—

"On paying rent in advance I have taken temporary settlement from the municipality for a period extending from 1303 to 1307 *sal* of Parka Bandh. I hereby give settlement to you, of the said tank for the years 1303 to 1307 *sal* at a *jama* of seventy Rupees, in cash, and ten seers of *chuna* (small) fishes or their value two rupees, per annum. You shall hold possession (thereof) throughout the period on paying the amount of rent by *kists* and year by year. If you fail to pay the kists, you shall pay interest as damages at the rate of annas 4 per rupee. If you make any plea on the ground of inundation, drought, non-rearing (of fish), &c., you will not get remission in the amount of rent. You shall also act according to the terms and the rules under which I have become bound under the municipality. If you do not pay the whole amount of rent up to the end of each year, I shall be able to take *chas* possession or to make fresh settlement in the beginning of the year following."

The plaintiff alleged that the defendant had withheld payment of rent due under the lease and instituted this suit for the recovery thereof in the Court of the Deputy Collector of Manbhoom under clause (4) of section 23, Act X of 1859. The defendant resisted the plaintiff's claim on the ground that the Court of the Deputy Collector had no jurisdiction to entertain the suit, and on the merits pleaded non-liability by reason of

eviction by title paramount. The Deputy Collector held that Act X of 1859 was not applicable to the case and that it was triable only by a Civil Court. He accordingly dismissed the suit. Upon appeal to the Judicial Commissioner, he affirmed the decision of the Court of first instance. The plaintiff has appealed to this Court, and on his behalf it has been contended that the view taken by the Courts below is erroneous, inasmuch as this is a suit for arrears of rent, due either on account of a right of fishery or on account of land within the meaning of clause (4) of section 23, Act X of 1859.

In support of the first branch of his contention the learned vakil for the appellant has relied upon the cases of *Puran Sauntra v. Shaikh Tajooddeen*(1), *Allum Chunder Shaha v. Bhurut Babool*(2), *Koylash Chunder Dey v. Joy Narain Jalooah*(3). These cases are no doubt authorities for the proposition that a suit for rent of a fishery or jalkar tenure is maintainable in a Revenue Court under Act X of 1859; but before they can be made applicable to the circumstances of the present litigation, it must first be held that the lease of the tank in suit was a lease of a fishery. The learned vakil for the respondent has argued that as the term 'right of fishery' is not defined in Act X of 1859, it must be assumed to have been used in its ordinary legal sense of a right of fishing in certain waters, that such a right is clearly an incorporeal hereditament, and that the lease in this case transferred to the lessee a right to the tank itself and not merely an incorporeal right. We are of opinion that this contention is well founded and is supported by the decision of *Duke of Somerset v. Fogwell*(4). Again, as pointed out in the cases of *Suroop Chunder Mozromdar v. Jaraine, Skinner & Co.*(5), *Bissen Lal Dass v. Ranee Khoyrunnissa Begum*(6), *Munohur Chowdhary v. Nursingh Chowdhery*(7), *Radha Mohun Mundul v. Neel Madhub Mundul*(8), and *David v. Grish Chunder Guha*(9), where the

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(4) (1826) 5 B. & C. 875; 29 R. R. 449.

(8) (1875) 24 W. R. 200.

(9) (1882) I. L. R. 9 Cal. 183.

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grant is merely of a right of fishery, the lessee acquires no interest in the sub-soil and is not entitled to retain possession when the water dries up. Looking, however, to the terms of the lease in this case, and especially to the condition that the lessee was to continue liable for the rent even in case of drought and non-rearing of fish, it is clear that the lease was intended to be of the entire interest of the lessor in the tank and was something more than a grant of a mere right of fishery. The first branch of the argument of the learned vakil for the appellant consequently fails and must be overruled.

The second branch of the contention of the learned vakil for the appellant is that the tank was nothing but land covered with water and that consequently the rent claimed in this suit is rent due on account of land, within the meaning of clause (4) of section 23, Act X of 1859. It must be conceded that there is considerable force in this contention, and, if the matter were *res integra*, we might perhaps hold that a suit like the present for arrears of rent due on account of a tank is maintainable in a Revenue Court. But it has been held in this Court in the cases of *Siboo Jalya v. Gopal Chunder Chowdhry* (1), *Nidhi Krishna Bose v. Ram Doss Sen* (2), and *Nidhee Kristo Bose v. Nistarinee Dossae* (3), that the provisions of Act X of 1859, which confer a right of occupancy, do not apply to a tank, which does not appertain to an agricultural holding, but is used only for the preservation and rearing of fish. These decisions are founded on the view that the term 'land' in section 6 of Act X of 1859 means cultivated land and does not include a tank regarded as land covered with water. The learned vakil for the appellant has sought to distinguish these cases on the ground that the question, which was directly raised in those cases, was whether or not a right of occupancy could be acquired in a tank not forming part of any grant of land, and that accordingly, although they interpret the term land in section 6 of Act X of 1859, they are not binding authorities upon the question of construction of the term land in clause (4), section 23, of the Act. As was pointed out, however, by Sir

(1) (1873) 19 W. R. 200.

(2) (1873) 20 W. R. 341.

(3) (1874) 21 W. R. 386.

Richard Couch in the case of *Ranee Doorga Soonduree Dossee v. Bibee Oomdutoonissa*(1), "In determining what is the meaning of 'land' and 'holding land' in Act X, we must look to all the provisions of the Act. It may be assumed that it was not intended that one part of it should apply to one kind of land, and another part to another, and that land in section 23 should have a different meaning from what it has in other sections. The intention of the legislature is to be deduced from the whole Act, and a construction, which makes the whole of it consistent, is to be preferred." We are therefore unable to uphold the argument that a suit for rent of a tank like the present, which is not part of an agricultural holding, is a suit for rent of land within the meaning of clause (4) of section 23, Act X of 1859. The second branch of the contention of the learned vakil for the appellant consequently fails and must also be overruled. As the correctness of the decision of the Court below is not questioned on any other ground, the appeal fails and must be dismissed with costs.

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Appeal dismissed.

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(1) (1872) 18 W. R. 235, 238.