

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gokul Mondar and others v. Pudmanmā Singh and others, from the High Court of Judicature at Fort William in Bengal: delivered the 5th July 1902.*

Present at the Hearing :

LORD DAVEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*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 Mondar 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 Bindadiara. 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 right," 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 Chap. X. of the Bengal Tenancy Act 1885 for a survey and record of rights in the 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 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 reasons 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 Section 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 shewn. 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 shewn.

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 Section 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 Section 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. 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.

2 Smith's Leading Case, 10th edn., p. 713.

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