

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Damodar Narayan Chowdhri and others v. Dalglish and others, from the High Court of Judicature at Fort William in Bengal; delivered the 1st February 1911.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[DELIVERED BY SIR ARTHUR WILSON.]

This is an Appeal from a decision of the High Court of Bengal, which reversed that of the Subordinate Judge of Tirhut. The suit was brought to recover possession of two areas of land, one containing 156 bighas and a fraction and the other 25 bighas and a fraction. The ground of the suit as to each plot was that the Plaintiffs were the proprietors of the land and the substantial Defendant Dalglish had been their tenant, that the tenancy had expired, and that the Plaintiffs were in law entitled to recover the land. The now Respondents represent Dalglish. There is no doubt of the fact that the Plaintiffs were proprietors as they alleged, and no doubt that Dalglish was their tenant, and no doubt that the leases under which Dalglish held had, according to their terms, come to an end. The defence as to the larger plot of land was that Dalglish had acquired occupancy rights in the land. There

was a further defence, based upon Section 4 of the Bengal Tenancy Act, to the effect that even if occupancy rights had not been gained, the claim must fail for want of the notice to quit prescribed by that Section. As to the smaller area the defence was based upon the latter of the two grounds alone.

The First Court held with respect to both properties that they were the proprietor's private lands within the meaning of Section 116 of the Tenancy Act, and that therefore under that Section no occupancy right could be acquired, and that Section 45, requiring notice to quit, had no application to the case. The High Court on appeal took a different view as to each of the areas, holding that neither of them was private land under Section 116, and dismissed the suit accordingly.

The case stands quite differently with regard to the two areas. As to the larger of these, their Lordships deem it sufficient to say that, in their opinion, the learned Judges of the High Court have correctly apprehended the law applicable to the matter, and their Lordships see no ground for doubting the soundness of the conclusion of fact arrived at by the learned Judges, to the effect that the larger area was not the proprietor's private land, with the consequence that there was nothing in Section 116 to preclude the acquisition by Dalglish of occupancy rights, and that such rights had accordingly been acquired.

With regard, therefore, to this larger plot, their Lordships are of opinion that the present Appeal cannot succeed.

With reference to the smaller area, the case stands on a wholly different footing. It appears from the judgment of the Subordinate Judge that at the trial before him it was admitted that those lands were the private lands of the proprietor, and that the case proceeded and was

dealt with on the footing of that admission. Their Lordships are of opinion that as to this part of the case the learned Judges of the High Court were in error in going behind that admission and reopening the question whether that smaller area was the private land of the proprietor.

In the course of the argument stress was laid upon the case of *Bengal Indigo Company v. Mohunt Roghubur Das*, 23 I.A. 158, the ruling relied upon being that on page 166. Their Lordships think that case has no bearing on the present. In that case what was ruled was that the presumption laid down in Section 5, Sub-section 5 of the Bengal Tenancy Act applied, there being no finding of fact to exclude that presumption under the terms of the clause. In the present case there is such a finding, and their Lordships see no reason to question it.

The result, in their Lordships' opinion, is that this Appeal should be disallowed so far as relates to the larger of the two areas, but that so far as it affects the smaller area the judgment and decree of the High Court should be set aside and those of the Subordinate Judge restored, and their Lordships will humbly advise His Majesty accordingly.

With regard to costs, inasmuch as each party has succeeded in part and failed in part, there will be no Order either here or below.

In the Privy Council.

DAMODAR NARAYAN CHOWDHRI
AND OTHERS

v.

DAIGLIESH AND OTHERS.

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