Shaila Bala Devi Vs Ganganarayan Bhakat and Others

Court: Patna High Court

Date of Decision: July 27, 1931

Acts Referred: Specific Relief Act, 1963 â€" Section 9

Citation: 148 Ind. Cas. 353

Hon'ble Judges: Dhavle, J

Bench: Single Bench

Judgement

Dhavle, J.
This is an appeal by the principal defendant. The suit was for ejectment, and it was brought ON the footing that the plaintiff was

the occupancy raiyat of the holding which he had settled with one Keshab Chandra Neogy as an under-raiyat for life. In 1917 Keshab Chandra"s

interest in the holding was brought to sale in execution of a rent decree and purchased by the defendant. Keshab died in 1331 of the Bengali Era

(corresponding to about 1924 A.D.) and plaintiff claimed that the defendant had no right after that event to remain on the land. The principal

defences raised were that Keshab was no occupancy raiyat, plaintiff being a tenure holder, and that Keshab"s interest in the holding was not

limited to his life. The learned Munsif decreed the suit, and defendant"s appeal which was heard by the Subordinate Judge at Purulia was

dismissed.

2. The first point raised before me is that the suit did not lie in the civil Courts at all, but should, u/s 46(4) read with Section 139-A, Chota Nagpur

Tenancy Act, have been brought before the Deputy Commissioner. In support of this contention Madhab Poddar Vs. Lall Singh Bhumij, ,

Jyotirmoy Mandal and Others Vs. Banamali Patar and Others, , and Mohan Bhakat Vs. Jagdayan Pande, , have been cited by the learned

Advocate for the appellant. These decisions referred to Sub-section (4) Section 46 of the Act, and it is the appellant"s contention that that

provision of the law governs the present case. The difficulty in accepting this contention is that Sub-section (5), Section 46, provides that nothing in

the section shall affect the validity of any transfer not otherwise invalid of a raiyats right in his holding or any portion thereof made bona fide before

the first day of January, 1903. The lease to Keshab dates from as long ago as 1292 B. Section and on the very terms of Sub-section (5) it is clear

that neither the restrictions on the transfer of their rights by raiyats contained in Sub-section (1), nor the special procedure for recovery of

possession within three years after the expiry of a lease, provided by Sub-section (4) of the section, could have any application to the present case.

It is true that the lease or leases in the case of Madhab Poddar Vs. Lall Singh Bhumij, , seem to have been prior to the first day of January 1903,

but that case was decided on the footing that Sub-section 4, Section 46, was applicable. No question seems to have been raised in that case

regarding Sub-section (5), Section 46, and I notice that Sub-section (4) deals with recovery of possession by application to the Deputy

Commissioner made

at any time within three years after the expiration of the period for which a raiyat has, under this section, transferred his right in his holdingÃ¯Â¿Â½

3. The transfer in the present case was on the face of it not made u/s 46 of the Act but was made at a time when the rent law prevailing in the

District was the Bengal Kent Act X of 1859. The learned Advocate for the appellant has not challenged the concurrent finding of the lower Courts,

based among other things on the Record of Eights, that the plaintiff is an occupancy raiyat and not a tenure holder. That has enabled him to argue

the applicability of Section 46 of I he Act, but as I have shown, Sub-section (4) of that section is of no avail to the appellant on account of the

saving contained in Sub-section (5). The contention is, therefore, overruled. It has next been argued that there is no admissible evidence on record

to show that Keshab''s was no more than a life interest in the land. In para 2 of the plaint it was alleged that it had already been proved in a civil

suit that Keshab Chandra Neogy had a life interest in the land, and further

according to law also, the right of the korfa under-raiyat is not and cannot be permanent or heritable.

4. The first of these allegations refers to a suit u/s 9, Specific relief Act, brought in 1908 by Keshab and Ex. 5, the decree in that suit, shows that

the parties compromised the matter by agreeing that Keshab was to have a life interest in the tenancy, that he was to pay rent for it at Rs. 27 a year

(instead of Rs. 19, the previous rate) and that Keshab was to be liable to ejectment in case of failure to pay the rent regularly. The learned

Advocate for the appellant has contended that the compromise travelled beyond the scope of the suit which was a simple possessory suit without

any reference to the title of the parties. I do not, however, see why it should be held that it was not open to the parties to settle their dispute

regarding the possession of the land then in question by settling various terms of the tenancy. It has been urged that that suit itself was incompetent

because under Act X of 1859 the tenant who was then the plaintiff could only have got relief from the Deputy Commissioner. In support of this

contention Jamla Singh v. Kingsley, 21 Ind Cas. 224 : 21 Ind. Cas. 224 : 17 CWN 201 has been cited. That was a decision in which it was held,

in June and July) 1973, by Stephen and Mullick, JJ. (N.R. Chatterjea, J., contra), that a dispossession within the meaning of Section 9, Specific

Relief Act, was in distinguishable from the illegal ejectment referred to in Section 23(6), Act X of 1859 and that, therefore, so long as the relation

of landlord and tenant subsists between the parties, Section 23(6), Act X of 1859, bars a civil suit u/s 9, Specific Relief Act. It does not seem to

me that the decision in Jamla Singh v. Kingsley 21 Ind. Cas. 224 : 17 C.W.N. 201, can be used in the present case for treating the proceedings in

the suit of 1908 as null and void.

5. Whether the Civil Court did or did not have jurisdiction in 1908 to entertain the suit u/s 9, Specific Relief Act, does not seem to have been

decided prior to the decision of that suit, and the judgment of N.R. Chatterjea, J., in Jumla Singh v. Kingsley 21 Ind. Cas. 224 : 17 C.W.N. 201,

is sufficient to show that it could not have been affirmed with any confidence in 1908 that such a suit was riot cognizable by the Civil Court. The

question of the jurisdiction of the Civil Court was not raised in that suit, and there was no parent defect of jurisdiction. It is, therefore, not open to

the appellant at that date to challenge the validity of the compromise decree of 1909 on the ground that according to the later view of two out of

the three learned Judges who decided the case of Jamla Singh v. Kingsly 21 Ind. Cas. 224 : 17 CWN 201 , such a suit was not cognizable by the

Civil Court. Mr. Section M. Mullick has further contended that the compromise of 1909 contained the essential terms of a lease and was,

therefore, inadmissible in evidence since it was not registered. That a compromise which substantially creates a lease does require registration is

rested on the decision in Sachindra Mohan Ghose Vs. Ramjash Agarwalla, decided in this Court on June 2, last in which Fazl Ali, J., elaborately

examined the previous authorities and held that such a compromise was inadmissible in the absence of registration, not only for proving the lease,

but also for what was claimed before him to be the collateral purpose of proving the amount of rent fixed by the compromise. Sachindra Mohan

Ghose Vs. Ramjash Agarwalla, however, is easily distinguishable as a case where the compromise created a lease. In the present case Keshab

was the lessee of the holding from before and the compromise merely varied or denned some terms of the tenancy. In Rampadarath Singh v,

Sohrai Koeri 52 Ind. Cas. 20 : : AIR 1920 Pat 602 : : 4 PLT 667 : (1920) pat. 114 : 3 U.P.L.R. (Pat) 166 , Mullick and Jwala Prasad, JJ., held

that a compromise in a rent suit which fixed the area and rent and changed the status of the defendant from an occupancy raiyat to a raiyat at fixed

rent, did not affect any transfer of interest and was therefore not a lease, but came within cls. (b) and (c) of Sub-section 17, Registration Act, with

the result that where the compromise became part of the decree, registration became unnecessary by reason of Clause (i) of Sub-section 2 of the

section. A similar view was taken in Jaynal Abedin and Others Vs. Hyder Ali Khan Pani, , where by the compromise the darpatnidar defendant

relinquished all claims in one of several mamas demised and the rent payable to the patnidar plaintiff was reduced accordingly. In Jagadish Chandra

Mukerji Vs. Rasik Mandal and Others, , such a document was regarded as admissible on the ground that it only contained an admission by the

landlord, and in the present case the learned Munsif actually treated it as admissible ""as an admission and agreement"" between the parties. Mr.

S.M. Mullick has further urged that the original petition of compromise has not been produced and that it is not permissible to give such secondary

evidence of it as is contained in the decree, Ex. 5. There is no substance in the contention. In para 8 of his written statement the defendant admitted

the contents of the compromise petition and only claimed that Keshab Neogy

was an illiterate fool and did not know (how)to read and write

the paragraph concluding that Keshab Chandra Neogy

did not make any rafanama that the landÃ¯Â¿Â½ was his life interest nor had he any reason to do so.

7. I have had this paragraph of the written statement carefully construed from the original in open Court by the Bengalee Translator of the Court

and have ascertained that the sentence which begins at line 48 on p. 3 of the paper book with the words

even if the plaintiff and his brothers means not a supposition but a definite admission that it was recorded in the compromise that the land was the

life interest of the defendant.

8. The reference to Keshab Chandra being ""an illiterate fool"" taken with this admission, makes it clear that in the concluding sentence of the

paragraph to which I have referred the defendant denies not the actual execution of the compromise by Keshab but only his intelligent

understanding of it and the lower Courts have not upheld the plea. There is yet another circumstance in the case which really; puts the appellant out

of Court, even if the contentions regarding the invalidity of the compromise decree of 1909 (whether on the ground of the Civil Court having no

jurisdiction to entertain the suit at all or on the ground of the compromise travelling beyond the scope of the suit), the inadmissibility of the decree in

evidence, on the ground of absence of registration, for the purpose of proving the nature of Keshab''s tenancy, and the intelligent character of

Keshab''s execution of it, were all to be accepted. This circumstance is the now unassailable fact that Keshab was only an under raiyat. It is often

said that korfa under raiyat in Manbhum paying cash rents have occupancy rights, but, as was observed in Muchi Ram Bagal Vs. Balaram Bhumij,

heritability is a right which has been attached by legislation to the tenure of an occupancy raiyat in Bengal, Bihar and Orissa; but it is not a

necessary condition attaching to the enjoyment of an occupancy right for life. The question of whether an under-raiyat who acquires occupancy

right acquires also the rights of an occupancy raiyat as defined by the Tenancy Acts depends entirely on local custom.

9. In the present case, the defendant did not take up the position that although Keshab may have been an under-raiyat he had by custom a

heritable occupancy right. Such interest as Keshab possessed in the land would therefore, on the unchallenged footing that he was an under-raiyat,

presumably come to an end with his death, and it is this interest that the appellant purchased with a knowledge of its limited character. The

execution petition Ex. 1 described the interest of Keshab, the judgment-debtor, as a life interest. Exhibit 2 shows that he put in an objection stating

that he had a jote jamai interest and we see from Ex. D that the Court heard the parties on the objection and came to the conclusion that the exact

nature of the judgment-debtor''s interest could not be decided in these execution proceedings. Exhibit 6, the sale notice in the case also spoke of

the life interest of the judgment-debtor. I have already shown that from whatever point of view the matter is regarded, Keshab had no interest, in

the holding to last beyond his life time and the exhibits to which I have just referred show that the appellant must have been well aware of what she

was purchasing at the auction sale.

10. Mr. S.M. Mullick has also urged that the present suit was not cognizable by the Civil Courts because Clause (4), Section 139, provides that:

all suits and applications under this Act to eject any tenant, of agricultural lands shall be cognizable by the Deputy Commissioner and shall not be

cognizable in any other Court, and in support of this contention he cites Mt. Jageshwar Kuer Vs. Tikakdhari Singh, . According to the head note of

the report it was held in that case that a suit to eject raiyats who are holding over after the expiry of a lease is not, in places to which the Chota

Nagpur Tenancy Act, 1908, applies, entertainable by a Munsif. u/s 139 of the Ant such a suit is cognizible only by the Deputy Commissioner.

11. The decision, however, proceeded on the footing that on the expiry of his lease, the raiyat becomes a non-occupancy raiyat for whose

ejectment there are specific provisions in the Act. In Rikhi Nath Kuari v. Rangoo Mahto 110 Ind. cas. 494 : AIR 1921 pat. 18 : 7 pat. 675 , Mt.

Jageshwar Kuer Vs. Tikakdhari Singh, , was distinguished, if not differed from, and it was held that upon the expiration of the term of the lease the

lessee becomes a trespasser unless the landlord chooses to treat him as a tenant for a fresh period, and that Section 139(4) does not bar the

jurisdiction of the Civil Court to entertain a suit u/s 41(4) for the ejectment of a person admitted into occupation under a registered lease for a term

who has ceased to be a tenant and she has become a trespasser and is holding adversely to the landlord. We are not concerned in the present case

with a registered lease, but we are concerned with the facts that the under raiyat, or the person who steps into his shoes, becomes a trespasser on

the expiry of his term, and that there are strong reasons given in Rikhi Nath Kvari v. Rangoo Mahto 110 Ind. cas. 494 : AIR 1921 pat 18 : 7 pat.

675 . for holding that Clause (4), Section 139 of the Act has no application to suits against trespassers. By way of analogy I might refer to Pratap

Udai Nath Sahi Deo and Another Vs. Jagannath Mahto and Others, , in which case it was held that a suit for the ejectment of a tenant from

manjhias land lies in the Civil Court as the (Chota Nagpur Tenancy Act does not provide for an application or suit for such ejectment. In Nandu

Mahton Vs. Bholu Mathton and Another, ,another Bench of this Court held that the Chota Nagpur Tenancy Act does not bar a civil suit for eject

most if the plaint proceeds on the footing that the defendant''s tenancy has terminated. The case of Muchi Ram Bagal Vs. Balaram Bhumij, to

which I have referred points to the same conclusion in the present case. That was a suit brought for the ejectment of an under raiyat''s heir after the

death of the under raiyat, and it was held that Section 46(4) was not available to the lessor and that the suit was maintainable in the Civil Court. I

have therefore no hesitation in holding that the present suit which is framed as a suit against a trespasser (see para 5 of the plaint) was not barred

by Section 139(4) of the Act and that this last ground of attack adopted for the appellant must also be overruled. The appeal fails and is dismissed

with costs.