(1978) 03 CAL CK 0002

Calcutta High Court

Case No: Appeal from Appellate Decree No. 1041 of 1959

Jahar Lal Manna	APPELLANT
Vs	
Sri Tarakeshwar Jews" Shebait Mohunt Sreemat Dandiswami Hrishikesh Asram of Tarakeswar and Others	RESPONDENT

Date of Decision: March 22, 1978

Acts Referred:

- Bengal Tenancy Act, 1885 - Article 3

Citation: AIR 1978 Cal 502 : 82 CWN 707

Hon'ble Judges: Sankar Prasad Mitra, C.J; Salil Kumar Datta, J

Bench: Division Bench

Advocate: Mon Mohan Mukherjee and Gouri Prosad Mukherjee, for the Appellant; Purna Chandra Basu and Dilip Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Sankar Prasad Mitra, C. J.

1. We heard this appeal on Feb. 4, 1972 when no one appeared for the respondents. By our judgment and decree on the same date we allowed the appeal. The plaintiff"s suit for declaration of title and recovery of possession of the suit lands was decreed. The decision is reported in Jahar Lal Manna Vs. Sri Tarakeswar Jew"s Shebait and Others, .

2. The respondent No. 2 thereafter filed an application under Order 41, Rule 21 of the Civil P. C. for a rehearing of the appeal on the ground that no notice of the appeal was ever served on him. He could not take steps for his appearance and arrange for his representation at the time of hearing. On this application under Order 41, Rule 21 we issued a Rule and ultimately made it absolute. The judgment and decree which we

passed on Feb. 4, 1972 were set aside.

3. The appeal has now been heard at length. The dispute relates to about 6.89 acres of land under Khatian No. 238 in mouza Chowtara, Police Station Dhania-khali, in the district of Hooghly. One Bholanath was a tenant in respect of this land under Satis Giri, the Mohunt of the Hrishikesh Ashram of Tarakeswar. On the 22nd December, 1932, Bholanath sold some portions of the land to the defendants Nos. 7 and 8. The defendants Nos. 3 to 6 are the heirs of Bholanath and the defendant No. 1 is the present landlord.

4. In 1937, the landlord filed a rent suit against the defendants Nos. 3 to 8. This was Rent Suit No. 999 of 1937. The suit was decreed on Feb. 2, 1938. Before the decree was put into execution, the plaintiff purchased the suit plots from the defendants Nos. 7 and 8 with notice to the landlord. The date of the plaintiff''s purchase is the 19th Dec., 1938.

5. Thereafter, on the 12-3-1941, in the rent execution case No. 763 of 1940 the suit lands were put to sale by auction. In this sale the defendant No. 1 became the auction purchaser.

6. Pursuant to the auction purchase, delivery of possession of the suit lands was given to the defendant No. 1 on the 8th Dec., 1941. The defendant No. 1 obtained possession through Court, and thereafter settled the suit lands to the defendant No. 2.

7. The plaintiff, who is the appellant before us, on the 28th Sept., 1951, filed Title Suit No. 230 of 1951 in the Munsif''s Court at Chinsura. In the plaint, inter alia, declaration of title and recovery of possession were claimed.

8. On the 24th April, 1954, the Second Munsif of Chinsura disposed of this title suit. He held that "The plaintiff''s title to the suit land acquired by Exhibit 3 has remained unaffected by the sale in execution of the decree in Rent Suit No. 999 of 1937 of the First Court of Munsif, Hooghly". But he dismissed the suit on the ground of limitation. According to him, to a suit of this nature Article 3 in Schedule III of the Bengal Tenancy Act, 1885 applies. This Article is as under :

Description of suit.	Period of Limitation.	Time from which period begins to run.

To recover possession of land claimed by the plaintiff as a raiyat or under-raiyat.	Two years	The date of dispossession.

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9. The plaintiff preferred an appeal which was marked as Title Appeal No. 187 of 1954. On the 4th Feb., 1958, the Additional Subordinate Judge of Hooghly dismissed the appeal. The Appellate Judge did not disturb the Munsif''s finding on the question of title. He agreed with him on the question of limitation. He was also of the view that Article 3 in Schedule III to the Bengal Tenancy Act, 1885 stood in the way of the plaintiffs obtaining a decree.

10. On the 29th April, 1958, the present appeal was filed. On May 5, 1965 P. N. Mookerjee, J. referred the appeal to a Division Bench as it raised important question of law.

11. The only point that arises for consideration is whether the plaintiff''s suit for declaration of title and recovery of possession would be governed by Article 3 in Schedule III to the Bengal Tenancy Act, 1885 or by the ordinary laws of limitation. In other words, whether the period of limitation would be two years or 12 years. If the period of limitation is 12 years, the suit was instituted within time.

12. Counsel for the parties have referred to several decisions in support of their respective cases. Mr. Monmohan Mukherjee for the appellant has contended before us that the dispossession contemplated under Article 3 is dispossession qua landlord or acting as landlord. In Kamaladhari Thakur v. Rameswar Singh (1913) 17 Cal WN 817, a Division Bench of this Court held that dispossession in execution of a decree by the landlord decree holder auction purchaser is not dispossession as landlord acting as landlord but as auction purchaser. It was further observed that the dispossession effected by the Court was an act of the Court and was not dispossession by the landlord.

13. This view was followed in Gajadhar Rai Vs. Ram Charan Gope and Others, as well as by another Division Bench of this Court in Gosta Behari v. Amiya Kumar (1936) 40 Cal WN 135. We had also taken the same view when this appeal was heard by us ex parte on the 4th Feb., 1972. We were of opinion that to attract the provisions of Article 3 in Schedule III to the Bengal Tenancy Act dispossession must be effected by the landlord in his capacity as landlord.

14. Learned Advocate for the defendant respondent No. 2 who did not appear before us on Feb. 4, 1972, referred to the decision in Satis Chandra Bandopadhya and Others Vs. Hashem Ali Kazi and Others, , a decision of a Special Division Bench of three Judges. It was an appeal u/s 15 of the Letters Patent against the decree of Cuming, J. differing in opinion from that of Page, J. Rankin, C. J. presiding over the Special Division Bench observed :

"As regards the contention that in order to avoid the operation of Article 3 it is sufficient to say that the landlord came into possession as auction purchaser in the capacity of auction purchaser and not qua landlord there, again, it seems to me that the words of the legislature are being seriously distorted. It is not a question of capacity but of incapacity. But the plaintiff"s case is--and what alone matters is the real character of the plaintiffs" suit--that the landlord"s entry was wrongful. Whether the landlord wrongfully claimed to re-enter for one reason or another is a matter which can only be imported by force into the words which the legislature has employed."

15. Rankin, C. J. quoted the observations of Chamier, C. J, in Jaimangalabati v. Jharulal reported in (1917) 2 Pat LJ 567 : (AIR 1917 Pat 304), Chamier, C. J. said, inter alia, :

"..... if it is shown that the plaintiff raiyat is in fact a tenant of the defendant who dispossessed him, in respect of the land claimed in the suit then Art, 3 applies to the suit. The object of that Article seems to provide a short period of limitation for a suit by a raiyat to recover a holding from which he has been dispossessed by his landlord. The reason or excuse, good, bad, indifferent, given or supposed to have been given by the landlord for dispossessing his tenant appears to have no bearing on the enactment and much confusion must ensue if the applicability of the enactment is made to depend upon such considerations."

16. The above decision was followed by a Division Bench in Sheikh Alam and Others Vs. Atul Chandra Roy and Others, . It was held that the Rule of Special Limitation that a tenant must bring a suit for recovery of possession within two years from dispossession by the landlord is not excluded when the landlord dispossesses as an auction purchaser in execution of a money decree and takes delivery of possession through Court.

17. In Smt. Khatun Jinnat Sahebani and Another Vs. Isha Prokash Gangooli and Others, Rau, J. observed in the context of insertion of Section 48-E in the Bengal Tenancy Act in 1928 and amended in 1938, as follows :

"The words "by the landlord" have been read into the Article, because of the limitation imposed upon the provisions of the Article by the preamble to the Act, which says that the Act is intended to amend and consolidate certain enactments relating to the law of landlord and tenant."

18. It was noted that u/s 89 no such tenant shall be ejected from his tenure or holding excepting in execution of a decree. The Court observed after quoting Section 48-E which

starts as "when a landlord has ejected an under-raiyat", as follows :

"Clearly then, the Act regards the landlord as (having) ejected the tenant even when he does so by process of Court, as he has to : otherwise the opening words of Section 48-E would be meaningless. If so, we may legitimately regard the landlord as dispossessing the tenant even when he does so by the machinery of the Courts."

19. The Court further considered other provisions of the Act. Section 48-C provides for ejectment of an under-raiyat on expiry of a written lease (Section 48-C (c)) or termination of lease by notice when there is no written lease (Section 48-C (d)) : Section 48-E provides for application for restitution by under-raiyat when a landlord has ejected an under-raiyat on any of the grounds specified aforesaid : And Section 89, as we have seen, provides that no tenant shall be ejected from his tenure or holding excepting execution of a decree. In the context of these sections Rau, J. observed :

"Suppose a landlord, having ejected an under-tenant A sublets the holding to B within four years of the ejectment. The section says that in these circumstances, A may recover possession. Now at a time A applies to Court for restitution he is not the tenant of the landlord : B is the tenant. Nor was A the tenant even at the date of ejectment, for ejectment was on ground that the tenancy had already terminated by eflux of time (Section 48-C (c)) or already terminated by notice u/s 48-C (d), What can be said is that the landlord is the landlord of the holding of which A seeks possession. If such is the position with respect to a provision in the body of the Act, there is no longer any warrant for the assumption that dispossession contemplated in Article 3, Schedule III is a dispossession by a person who was the plaintiff''s landlord at the date of dispossession. It should be sufficient if the dispossession was by the landlord of the holding of which the plaintiff seeks to recover possession."

20. The Court further observed :

"..... the most the scheme of the Act requires is that we should read the entry in the third column in Article 3 as if it ran, the date of dispossession, provided that the dispossession was by a person who at that date was a landlord of the holding to which the land is claimed by the plaintiff to appertain, irrespective of whether the dispossession was effected directly or through the instrumentality of a Court or otherwise."

21. These aspects of the amended provisions of law were not noticed in the earlier decisions which we relied on in our judgment reported in Jahar Lal Manna Vs. Sri Tarakeswar Jew''s Shebait and Others, .

22. In Fatema Bibi v. Chota Khuki. (1949) 53 Cal WN 159, following the above decision G. N. Das, J. was also of the opinion that when a landlord takes possession of raiyati holding as auction purchaser in execution of his decree for rent, there is "dispossession" of the raiyat within the meaning of Article 3, Schedule III of the Bengal Tenancy Act. Further the learned Judge has observed that what matters is whether the plaintiffs were

claiming a subsisting raiyati or under raiyati right as against the defendant and this has to be gathered from the plaint.

23. We are in respectful agreement with the observations in the decisions now cited before us on behalf of the defendant respondent No. 2. In the plaint in the instant suit also the plaintiff had prayed for a declaration of his raiyati interest under the landlord auction purchaser.

24. The appellant"s counsel has placed reliance on the Full Bench decision in Kubir Malla Vs. On the death of Titu Bibi her heir Manik Mallik and Others, . The Court in this case was not concerned with the question of applicability of Article 3 of Schedule III of the Bengal Tenancy Act when the dispossession is by the landlord auction purchaser. In that case the dispossession was by a third party auction purchaser of the interests of the defaulting tenant. It was held that Article 3 of Schedule III had no application. The decision has no relevance to the case before us.

25. In the premises, the appeal is dismissed. There will be no order as to costs.

S.K. Datta, J.

26. I agree.