

(1928) 03 CAL CK 0001

Calcutta High Court

Case No: None

Giribala Dasi

APPELLANT

Vs

Kedar Nath Naskar

RESPONDENT

Date of Decision: March 19, 1928**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 12, 149(3)

Citation: AIR 1929 Cal 454 : 117 Ind. Cas. 534**Hon'ble Judges:** Mitter, J**Bench:** Division Bench

Judgement

Mitter, J.

These two appeals arise out of two suits brought by, the plaintiff, now appellant, u/s 149, Clause (3), Ben. Ten. Act, in which she wanted a declaration that she was entitled to rent deposited by the tenant-defendants in each of the two cases and she claimed that she purchased the tenure which originally belonged to Ishan Chandra Maity in 1910 and that she has been in possession thereof since then. The suit was resisted by defendant 1 who claimed to have purchased the property at a sale under the Public Demands Recovery Act in the year 1914. It is admitted that the plaintiff lands appertained to khas mahal Estate No. 2835 and were comprised in a chak of 172 bighas. The original owner of this tenure was one Gopal Chandra Chatterjee, whose interest was sold in execution of a mortgage decree against him and purchased by one Tapaswiram. Ishan and defendant 1 purchased this interest in the tenure from Tapaswiram. Ishan's interest was one-third and that of defendant 1 was two-thirds in this chak. In execution of a money decree, Ishan's interest was sold and purchased by one Rakhal Bhandari in 1907 and in the year 1910 Rakhal sold whatever he purchased from Ishan to the present plaintiff. The present plaintiff after his purchase deposited the landlord's fee as required by Section 12, Ben. Ten. Act. The defence of defendant 1 is that the interest of Ishan was extinguished by the sale under the Public Demands Recovery Act and that it was not a transferable

interest and passed no title in favour of the present plaintiff. The Court of first instance overruled the defence and gave the plaintiff decrees in the two suits. Against these decrees two appeals were carried to the Subordinate Judge by the defendant and there was a further second appeal to this Court in which, by consent of parties, it was agreed that this suit u/s 149, Clause (3), should be tried as a title suit and the question of title shall be determined finally by the Subordinate Judge on remand. The Subordinate Judge has reversed the decision and decrees of the Munsif in the two suits. He finds, in the first place, that the interest of Ishan was not a transferable interest and that, therefore, the plaintiff acquired no title to the property, as his interest was not recognized by the Government who was the proprietor of this tenure. He further finds that, even if the interest of Ishan was transferable, it was extinguished by the sale in favour of defendant 1 under the Public Demands Recovery Act and as that sale still stands, the plaintiff has got no title to the plaintiff lands. He, accordingly, allowed the appeals and dismissed the plaintiff's suits. Against these two decrees of the Subordinate Judge of 24-Parganas, two second appeals have been taken to this Court and two points have been taken by Mr. Chatterjee who has appeared for the plaintiff-appellant in both these appeals. It is argued, in the first place, that the Subordinate Judge is clearly in error in holding that the interest of Ishan was not a transferable interest.

2. It is admitted that the interest of Ishan is heritable. It is further found from the khas mahal jamabandi register, which was produced by the defendants-respondents as their own document in the Court of first instance, that the interest of Ishan was a mourasi interest and the lower appellate Court was clearly in error in holding that the interest was not a permanent interest on an erroneous view of the meaning of the word "mourasi." It is argued, in the second place, that as the tenure was a permanent tenure, the moment it is shown that the landlord's fee has been paid u/s 12, Ben. Ten. Act and the deed registered by the registering officer in favour of the plaintiff, the landlord-Government was bound to recognise the transfer and was bound to issue the certificate under the Public Demands Recovery Act in the plaintiff's name. The certificate not having been admitted in his name, his interest could not have passed at the sale in execution of the certificate which was held under the Public Demands Recovery Act in 1914. I think both these contentions of the learned advocate are sound and must prevail. The learned Subordinate Judge is clearly in error in holding that the word "mourasi" does not convey a permanent interest. As has been pointed out in the Tagore Lectures for the year 1895 by Mr. Sarada Charan Mitra, (1921 Ed. p. 205) who was one of the Judges of this Court and who is regarded as an authority on the land laws of Bengal, that mourasi tenures are, by the definition itself, "heritable" and which are:

not held for any "limited time." The learned author at p. 203 further points out that it has now been settled that the words with your sons and grandsons in succession (Bengali) "

i.e.,

from generation to generation or generations born of your womb successively enjoy the same

and words of similar import convey a permanent and transferable right. They convey an absolute right subject to payment of rent. If there are no words fixing the rent in perpetuity, the tenure becomes mourasi, but not mokarrari. There can be no doubt that the word mourasi," which implies, according to its literal meaning, "a succession from generation to generation" in the interest held by the mourasidar, conveys the idea of permanency, as it can be predicated of such a tenure that it is held for an indefinite time. This tenure, therefore, comes clearly within the definition of "permanent tenure" as stated in Section 3, Clause (8), Ben. Ten. Act. The Subordinate Judge was evidently misled by the decision in the case of AIR 1925 97 (Privy Council) in which their Lordships of the Judicial Committee said that a mourasi and mokarrari interest implies "permanent and transferable and at a fixed rent." From that it does not follow that mourasi interest is not a permanent interest without fixity of rental. It appears also in this case that there have been at least seven transactions of the property by way of sale and mortgage, etc. It appears also from the landlord's books, the jamabandi registers, that the name of the transferee is mentioned and that the transferee has been recognized by the Government. It is also said that there has been no alteration of rent. In my opinion, the use of the expression "mourasi" is sufficient to constitute the tenure a permanent tenure. In addition to that there are other circumstances, to which I have just referred, which place it beyond doubt that the tenure was one which was of a permanent character. The first ground taken appears to be well founded and must be given effect to.

3. With regard to the second ground taken, it appears to me that the sale under the Public Demands Recovery Act in favour of defendant 1 was a nullity, for it was a sale in pursuance of a certificate in which the plaintiff was not named, although the plaintiff had given the necessary notice of the transfer in his favour u/s 12, Ben. Ten. Act, and his transfer was complete as soon as the document was registered. As has been pointed out by the Judicial Committee of the Privy Council in the case of *Surapati Roy v. Ram Narayan Mukerji* AIR 1923 P.C. 88.

a transfer of a permanent tenure by a registered document was held to be complete u/s 12, Ben. Ten. Act, as soon as the document was registered, and the same view was" expressed in the case of *Hemendra Nath Mukerji v. Kumar Nath Roy* 12 C.W.N. 478, already referred to. Their Lordships consider that the present controversy is covered by the latter decision.

4. It was incumbent on the Government to have issued the certificate in the name of the present plaintiff, if they wanted to make the sale effective as against her or as against the tenure. The decree could not be regarded as a decree for arrears of rent within the meaning of Section 20, Clause (3) of the Public Demands Recovery Act, for

the real tenant was not made a party to the certificate. Consequently, what passed by the sale was only the right, title and interest of the judgment-debtor if anything "passed at all. There is good authority for saying that if the real person liable under the certificate is not made a party, the sale is an absolute nullity. Reference may be made in this connexion to the case of [Lalit Mohan Sen Vs. Manoranjan Ghosh Chaudhuri and Others,](#) . As was pointed out by their Lordships of the Judicial Committee in the case of Khierajmal v. Daim [1905] 32 Cal. 296, the Court had no jurisdiction to sell the property of persons who were not parties to the proceedings pursuant to which the sale appears to have taken place. The sale, therefore, did not affect the interest of the plaintiff in any way. The result is that these appeals are allowed, the decrees of the Subordinate Judge in both the oases set aside and those of the Munsif restored with costs throughout.