

(1938) 11 CAL CK 0004

Calcutta High Court

Case No: Appeal from Appellate Decree No. 667 of 1937

Tikandas Mohunt

APPELLANT

Vs

Ram Kishore Das Mohant

RESPONDENT

Date of Decision: Nov. 21, 1938

Final Decision: Dismissed

Judgement

Jack, J.

This appeal has arisen out of a suit for assessment of fair and equitable rent of the Mouza of Bansha in the District of Bankura after declaration that the mokarari settlement at fixed rent of the mouza dated the 27th Aswin, 1273 B. S., given by Ram Das Mohanta as paricharak of the Plaintiff deity in favour of one Raghu Nath Das Adhikari was void after the death of Ram Das and not binding on the deity. The suit was decreed in the trial Court in part and was decreed in a modified form on appeal. By both Courts the potta, executed by Ram Das Mohanta in favour of the Defendant's predecessor, was declared void and inoperative against the Plaintiff deity. In this Court the principal contention is that the Courts below have erred in law in allowing the Plaintiff to raise any question as to the validity of the settlement and about the mokarari character of the tenancy inasmuch as the suit for that purpose is barred by limitation and is also barred by the principle of res judicata. The original lease was granted in 1866. The lessor Ram Das died in 1900 and was succeeded by Gokuldas under whom Raghunath Das and his successor Ram Ratan Das continued to hold as tenants at the same rent. After Ram Ratan died in 1916, Gokul instituted a suit against his successor for ejectment on two alternative grounds; in the first place, that he, and not Gobinda, was the heir of Ram Ratan and, in the second place, that Ram Ratan held a life interest only and on his death the lessor was entitled to possession. This suit was dismissed. The present Plaintiff is the successor of Gokuldas and the suit is against the successor of Gobinda. The Appellate Court held that if this suit had been a suit for possession it would have been barred by limitation, but he holds that inasmuch as the suit is not for possession but for assessment of fair and equitable rent it is not barred under the

provisions of Art. 144 of the Limitation Act, nor is it barred under the provisions of Art. 134 (B) of the Limitation Act, both of which relate to a suit for possession. In this appeal it is contended that the suit was one for recovery of possession and therefore the Court was not right in holding that the suit was not barred by limitation. In the case of *Thakur Sri Raghunath Jui* represented by the shebait *Ram Kishore Das Mohunta v. Ganga Gobinda Pati* 41 C.W.N. 693 (1937) it was held:

A suit by a mohunt who came into office after the amending Act, to recover possession of a pro. perty of the deity of which a mokarari lease was granted by a mohunt. before the amending Act, is covered by the Article and when 12 years have passed from the death of the grantor of the lease, the suit is barred.

2. It is clear, therefore, that if this had been a suit for recovery of possession it would have been barred by limitation since the grantor of the lease died in 1900 and this suit was not brought until 1933. The question is whether in these circumstances the Plaintiff is entitled to apply for enhancement of rent. In his plaint the Plaintiff bases the suit for recovery of enhanced rent on the Plaintiff's alleged right to khas possession. He states that he is relinquishing his right to khas possession and is asking for fair and equitable rent of the property after the declaration that the mokarari settlement in favour of the Defendant's predecessor is illegal and void and not binding upon the Plaintiff or the deity. It is found by the Court of Appeal below that there had been no new tenancy created by the predecessor of the Plaintiff and (1) 41 C. W, N, 693 (1937), therefore the existing tenancy which the Defendant at present holds must have been created by Ram Nath Das by the lease in 1866 and the Plaintiff would only be entitled to re-enter and to khas possession if the lease is void. Supposing there is a decree for fair and equitable rent in this case and in order to realise that rent the Plaintiff seeks to oust the Defendant from possession of the tenancy, it will be open to him to contend that the original lease is still in existence and that he cannot be ousted in a suit for rent so long as the original lease subsists. No suit having been brought within time to set aside the mokarari settlement, that settlement is still existing and in these circumstances there can be no enhancement of rent by the suit since the present rent is mokarari rent. The Appellate Court says: There ia no evidence of his (Gokuldas) ever creating a new tenancy during his tenure of office; on the other hand, he claimed to have succeeded to the identical putni interest created by his predecessor. Therefore,when Gokuldas kept on receiving the rent after he lost his suit against Gobindadas, such receipt of rent cannot properly be regarded as being received by him in respect of a new tenancy created by him but, on the other hand, it should be considered to have been received in respect of a permanent right which the Asthal is not able to repudiate in an action of ejectment. If the theory of "new tenancy fails, which, in my opinion, it does, then it is certain that the period of limitation commenced from the death of Bamdas in 1900 when the lease was dead and adverse possession of the leasee took its start and it continued far beyond the statutory period....

3. That being the case and the previous tenancy still being in existence and being a mokurari tenancy, this suit for enhancement of rent cannot succeed.

4. Then again, on the question of res judicata, the suit brought by Gokuldas was in the first place on the ground that he was the heir of Ram Ratan and had succeeded to the tenancy which was held by Ram Ratan, namely, a heritable tenancy created by the lease in 1866. That was a tenancy at a fixed rent and therefore inasmuch as he claimed to succeed to that tenancy it is difficult to see how he can now contend that that tenancy was void. So that, there is a practical admission of the predecessor of the present Plaintiff that Ram Ratan held under a heritable tenancy under the lease from 1866.

5. It was claimed alternatively in that suit that Ram Ratan held a life-interest only, but ejectment of the tenant was not claimed on the ground that the original lease not having been for legal necessity, it therefore terminated at the death of the grantor. Accordingly it must be considered that the suit for the declaration that the lease is void on this ground is barred by the principle of constructive res judicata. The Lower Court finds that this does not apply because in that suit Gokuldas claimed inheritance of the putni lease itself as the legal heir of the deceased Ram Ratan. But the fact that he made such a claim would not bar him from the alternative claim that the lease was void not having been for legal necessity. Therefore, the fact that he made the claim to inherit from the deceased Ram Ratan would not take the case out of the principle of constructive res judicata. But the learned Judge adds that Gokuldas having accepted the rent could not repudiate the lease during his life time.

6. It is true that Gokuldas accepted the rent but it does not necessarily follow that he accepted the rent as the rent of a permanent tenancy. Mere acceptance of the rent would not necessarily bar him from seeking to re-enter after the death of the present tenant unless it be held that the mere acceptance of the rent would amount to admission of the previous tenancy. But that is not so. It has been held in the case of *Srimati Daivasikhamani Ponnambala Desikar v. Periyanan Chetti* 40.C. W. N. 901 (P. C.) (1936) that

When a new manager accepts rent from a person who had obtained a permanent lease from his predecessor, such receipt of rent is referable to a new tenancy and the possession of the lease cannot be adverse until such new manager's office terminates.

7. So that unless it was proved that the dealings of the new manager were such as to suggest that he accepted the rent as payable not in respect of a new tenancy created by him but as payable in respect of a permanent right, the fact that he accepted rent would be no bar to the mokarari settlement being declared void. This ground also would not take the case out of the realm of constructive res judicata.

8. The third ground on which the Judge finds that the principle is not applicable is that that was a suit for recovery of possession whereas this is a suit for fair and equitable rent. But the issue which arises in this suit as to whether the original lease was void was also an issue which, had the matter been raised, as it should have been raised, in that suit, must have been decided in that suit.

9. I therefore think that this suit for the declaration that the original lease is void is also barred by the principle of constructive res judicata. As therefore the original lease is still continuing and has not been declared void and cannot be declared void, it remains that there could be no question of enhancement of rent.

10. The appeal is therefore allowed and the suit for enhancement of rent is dismissed,--the claim for recovery of rent being allowed at the rate of Rs. 49 per annum with 25 per cent, damages and cess and proportionate costs.

11. The cross-objection is not pressed and is dismissed. Leave to appeal under sec. 15 of the Letters Patent is refused.