
Tikandas Mohunt Vs Ram Kishore Das Mohant

Appeal from Appellate Decree No. 667 of 1937

Court: Calcutta High Court

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.