

(1920) 08 CAL CK 0010**Calcutta High Court****Case No:** None

Mahendra Nath Mondal and

APPELLANT

Another

Vs

Sheikh Shamsuddin and Others

RESPONDENT

Date of Decision: Aug. 6, 1920**Citation:** AIR 1921 Cal 146 : 62 Ind. Cas. 344**Hon'ble Judges:** Asutosh Mookerjee, Acting C.J.; Ernest Fleteher, J**Bench:** Division Bench**Judgement**

Mookerjee, Acting C.J.

1. This is an appeal by the plaintiffs in a suit for recovery of possession of land, upon declaration of title.

2. The subject-matter of the litigation is an occupancy holding which was held by ore Narayan Chand Maiti under two sets of landlords, the Nandis and the Mitras. Maiti made a testamentary disposition of his properties on the 15th Jane 1885 and died shortly afterwards. He left a widow Keshabi Debi, an adopted son Radha Krishna and a subsequently born son Harey Krishna. By the Will the testator dedicated all his properties to the service of his family deity and appointed his adopted sen and his after-born son as shebaits. He further directed that Keshabi Debi would be the executrix during the minority of the two sons. Probate was granted to her on the 1st March 1886; but for some unexplained reasons, it was not limited during the minority of the two sons. Keshabi Debi took possession of the estate by virtue of her office as executrix While she was thus in occupation, default was made by her in the payment of rent to both sets of landlords. The result was that in 1905 the Nandi defendants instituted a suit against her, obtained a decree for their share of the rent, and at a sale held in execution thereof purchased the holding on the 21st January 1908, In 1908 the Mitra landlords brought a suit for their share of the rent, obtained a decree and put up the property to sale on the 18th September 1908, when it was purchased by the plaintiffs. It appears that the plaintiffs, with a view to

make their title absolutely secure, subsequently obtained a settlement from the Nandi landlords on the 26th March 1913. The defendants claim under a derivative title from the adopted son and the after born son: and, the question in controversy between the parties is as to the legal effect of the two execution sales.

3. The Courts below have dismissed the suit on the ground that nothing passed by these sales, beyond the right, title and interest of the then defendant, namely, Keshabi Debi, and as she had no personal interest in the disputed property, the plaintiffs have acquired no title to the occupancy holding. In our opinion this view cannot possibly be sustained.

4. The defendants respondents have urged that, apart from all other questions, it is plain that as Keshabi Debi was not expressly described as the executrix, nothing could pass by the execution sales beyond her right, title and interest. We are of opinion that there is no foundation for this contention. It is incumbent upon the Court to look to the substance of the proceedings and not to confine its attention to the mere form. In support of this view reference may be made to the decision of the Judicial Committee in *Bijraj Nopani v. Sreemuthy Pura Sundari Dasee* 24 Ind. Cas. 296 : 42 C. 56 : 27 M.L.J. 93 : 1 L.W. 655 : 18 C.W.N. 1313 : (1914) M.W.N. 679 : 16 M.L.T. 338 : 12 A.L.J. 1186 : 16 Bom. L.R. 796 : 20 C.L.J. 368 : 41 I.A. 189 (P.C.). In that case, an executor, who had a beneficial interest in the testator's estate, joined with other beneficiaries in the sale and conveyance of a part of the estate to bona fide purchasers for value. The executor did not purport to convey in his capacity as executor, but the deed stated that all the estate, right and title of the vendors were conveyed. Lord Moulton held that the deed conveyed the whole title vested in the executor, and that it was not proper to infer from the conduct of the parties and from indications in the deed that the intention was only to convey the beneficial interest, since that inference was contrary to the terms of the conveyance. This principle is applicable, quite as much to involuntary alienations as to voluntary conveyances. We must consequently examine the nature and the scope of the rent suits and the execution proceedings which followed thereupon.

5. There can be no room for controversy that Keshabi Debi was sued as in possession of the estate of the testator by virtue of her office as executrix. After the death of her husband, she had been registered in the office of the landlord as the representative of the estate: and, this was manifestly the proper course to follow. But it has been argued that as the grant should have been made to her to continue only during the minority of the adopted son and the after-born son, we must assume that as soon as they attained majority, the grant became inoperative in the eye of the law. The evidence, however, does not show the actual dates when the two sons respectively attained majority. But it is plain from the facts found by the Courts below that at the date of the institution of the two suits for rent in 1908 and 1909 Keshabi Debi was still in possession as the executrix. The executorship had not closed, and even if it had closed, the fact was not known to the landlord, who had up

to that time rightly treated Keshabi Debi as the representative of the estate. In these circumstances, we must hold that the decrees in the two rent suits were rightly obtained against the executrix in possession of the estate. These decrees were obtained for sums which were payable out of the income of the estate by the representative to the a superior landlord. The appellants have argued that, on these fasts, the effect of the sales was to pass the entire interest to the execution purchasers. This view has been controverted on behalf of the respondents, who have relied on the decision of the Judicial Committee in Jiban Roy Krishna v. Brogo Lal 30 C. 550: 5 Bom. L.R. 428 : 7 C.W.N. 425 : 30 I.A. 81 : 8 Sar. P.C.J. 444 (P.C) and the judgments of this Court in Doorgadhur Biswas v. Huro Mohinee Dabee 1 Ind. Cas. 184 : 13 C.W.N. 270; Bijoy Sankar Sikdar v. Rajendra Kumar Bose 1 Ind. Cas. 589 : 13 C.W.N. 746 : 9 C.L.J. 479 and Provash Chandra v. Jaharuddin Mondal 59 Ind. Cas. 49 : 32 C.L.J. 77. But these decisions are of no assistance to the respondents. In the case first mentioned, the decree was obtained against a Hindu daughter who was in possession of the estate of her father an a limited and qualified owner. It was held that the sum which was sought be recovered under the decree was a sum personally payable by her and that the result of the execution of such a decree was not to affect prejudicially the position of the ultimate reversionary heir. In the other three cases mentioned, a question arose whether in their special circumstances the principle of representation enunciated in Jeo Lal Singh v. Gunga Pershad 10 C. 996 at p. 1001 : 5 Ind. Dec. (N.S.) 664, and applied in Nitayi Behari Saha v. Hart Govinda Saha 26 C. 677 : 18 Ind. Dec. (N.S.) 1033, was applicable. No such question, however, arises in the case before us, because it is plain beyond controversy that the person who was sued was the representative of the estate. The respondents are further in a position of considerable difficulty, because it has been found that even after attainment of majority, the two sons allowed their mother to remain in possession as the executrix: in other words, they held her out to the landlord as the representative of the estate. In these circumstances, the decrees obtained against Keshabi Debi were operative against the estate and a valid title in the disputed holding has vested in the appellants.

6. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and the suit decreed with costs in all the Courts.

Fletcher, J.

7. I agree.