Niharbala Debi Vs Shashadhar Ray Chaudhuri

Court: Calcutta High Court

Date of Decision: May 8, 1930

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 148A, 158B

Citation: AIR 1931 Cal 485

Hon'ble Judges: Rankin, C.J; Mukerji, J

Bench: Full Bench

Judgement

Mukerji, J.
This appeal has arisen out of an order passed by the District Judge of Burdwan, affirming, on appeal, an order made by the

Munsif, First Court, by which the objection of the respondent to the execution of a decree for rent by sale of the defaulting tenure was upheld. The

decree-holder has preferred this appeal.

2. The appellant is a cosharer landlord. In 1920 one of the cosharers of the appellant instituted a suit for rent on a plaint framed in accordance with

the provisions of Section 148-A, Ben. Ten. Act. The appellant was made a party to that suit. The rent claimed was for a period ending with the

year 1326 B. S. The appellant did not appear in the suit and the cosharer, who had instituted it, obtained a decree for his share of the rent, in

accordance with the provisions of the said section; in execution of the decree that was obtained, the appellant"s cosharer put up the tenure to sale

and it was purchased by the respondent. The respondent thereafter made an application to set aside the sale upon the ground that what had passed

to him under the sale was the right, title and interest of the judgment-debtor tenant and that, although the sale purported to be one in execution of a

decree for rent, in point of fact it had not that character. The application made, as aforesaid, by the respondent was rejected. Before the tenure

was put up to sale, a notice appears to have been served upon the appellant in accordance with the provisions of Section 158-B, sub-8. (2), Ben.

Ten. Act. The appellant however did not appear in the proceedings, with the result that the sale took place as stated above. Thereafter the

appellant instituted another suit for rent for the years 1327 to 1330 B. S. This was a period subsequent to the one for which the previous suit for

rent had been instituted and anterior to the date of the respondent"s purchase, She obtained a decree and then put the decree into execution. The

respondent objected that the decree could not be executed as against the tenure which was now in his hands. It is this objection that has been

upheld by the two Courts below.

3. The Courts below have held that, in point of fact, two of the cosharer landlords had been omitted from the suit which was instituted by the

appellant"s cosharer in 1920 and that, although the plaint in that suit purported to be one framed in accordance with the provisions of Section 148

A, Ben. Ten. Act, the decree that was obtained in that suit would not in law have the effect of a rent decree. It has also been found by both the

Courts below that the appellant was aware of the fact that the said two cosharers had been omitted from the suit. These findings have not been

challenged before us and indeed, on the materials upon which they have been come to by the Courts below, they cannot possibly be challenged.

The view upon which the Court below have proceeded is expressed by the learned District Judge in these words:

The appellant is estopped from questioning the validity of the rent sale as a rent sale she having been a party to the decree and to the execution

thereof as a rent decree, having got notices u/s 158-B, Ben, Ten. Act.

4. I am clearly of opinion that this view of the law is not correct.

5. In a plaint framed u/s 148-A, Ben. Ten. Act, the cosharer landlord is made a party in order that certain adjudication may be made in his

presence and in order to give him an opportunity of taking the benefit of such adjudication. It is quite open to him to appear in the suit or not. If he

does appear, he is bound by the decree. If he does not appear, then the result is that he is bound by such adjudication as is actually made and is

necessary to be made in giving proper relief to the plaintiff in accordance with the provisions of the section. The notice contemplated by Section

158-B, Ben. Ten. Act, is given to a cosharer landlord for his benefit in order that he may avail of those rights which are given to him by the law. If

he chooses to take the benefit which the law reserves to him in this respect, he is bound by the proceedings. But if he does not choose to appear in

the proceedings or to contest the sale that is to take place I find it extremely difficult to hold that he forfeits such right as he has under the law as

against the tenant or in respect of the tenure or holding. Indeed, it would not appear that he has any power to resist the sale. The sale would take

place even if he chooses to appear and contest the proceedings. I do not find any provision in Chap. 14 or in any other part of the Bengal Tenancy

Act, which expressly provides for an adjudication of the question as to the character of the sale upon an objection taken by a cosharer land lord.

The sale takes place and, if the proceedings are in conformity with the provisions of Section 148-A and the subsequent sections, its effect is that of

a rent sale; otherwise it is to be regarded as a sale held in execution of a decree for money. I am therefore of opinion that the view upon which the

Courts below have held that the appellant is estopped from questioning the validity of the rent sale as a rent sale is not correct.

6. On behalf of the respondent our attention has been drawn to a decision of this Court passed in a Letters Patent Appeal in the case of Jabed Ali

Talukdar and Others Vs. Surendra Nath Bandopadhya and Others, and to a finding which the learned Munsif in this case has recorded in his

judgment. In the case aforesaid cited on behalf of the respondent, this question arose upon somewhat similar circumstances and B.B. Ghose, J.,

who heard the appeal to this Court sitting as a single Judge, observed thus:

I cannot see that there was any duty cast upon the plaintiffs who were made pro forma defendants in the suit to give notice to intending purchasers

that the rent suit of the Nawab or the execution sale or the proceedings in execution were not such as to confer title on the purchaser as

contemplated under the special provision of the Bengal Tenancy Act. If there was no such duty cast upon him his silence could not have influenced

the conduct of the auction-purchaser in any way and it cannot be said that the plaintiffs are estopped by this conduct of theirs in asserting their title.

7. From this decision an appeal was taken under the Letters Patent. In the judgment of Greaves, J., who'' was one of the Judges who heard the

appeal, ha observed on the question of estoppel that Ghose, J., had negatived the contention and had held that the mere fact that the plaintiffs were

on the record in the Nawab''s suit as cosharers did not involve on them any obligation of stating the facts to the purchaser and in that respect, he

agreed entirely with the conclusion at which B. B. Ghose, J., had arrived. He further observed that, in his opinion the mere fact that the plaintiffs as

cosharers were on the record in the Nawab''s suit did not involve any obligation on them of stating the encumbrance at the time of the sale. So far

therefore as the question of estoppel, based upon the silence of the cosharers as parties to the suit, is concerned, it is quite clear that the learned

Judges were of the same view as B. B. Ghose, J. The learned Judges however found that, in the appellate judgment of the Subordinate Judge,

there was a finding, which they were bound to regard as a finding of fact and which was to the effect that the plaintiffs had knowledge of the fact

that there were some other cosharers, and professing to act upon the said finding the learned Judges held that, by the doctrine of equitable

estoppel, the fact of the cosharer landlords'' standing by and allowing the purchaser in believing that he was purchasing free from encumbrance

precluded them from now asserting that the decree that had been obtained was not a rent decree. It is not possible for me, at the present moment,

to ascertain what the actual facts of that case were; but, if the finding of the learned Subordinate Judge was not based upon any other evidence

regarding the actual conduct of the cosharer landlords, but was merely a statement of a legal position which arose from the fact that the cosharer

landlords, who had been made parties to the suit and had been given notice u/s 158-B had not appeared and that therefore it should be taken that

they were standing by and allowing the purchaser to make the purchase in the belief that the sale was a sale in execution of a decree for rent, with

the utmost respect I feel that I cannot agree in the view. That would mean that there is a duty cast upon the cosharer landlord who has knowledge

of some defect in the frame of the suit, when he receives notice u/s 158-B, Ben. Ten. Act, to come forward and to state that fact before the Court.

I do not find that the law anywhere casts any such obligation upon him. It is quite clear that, unless there is such a duty cast upon him, his silence

cannot possibly amount to an acquiescence, giving rise to an estoppel as against him. Moreover, it is impossible to conceive that the silence of a

cosharer landlord, under such circumstances, can afford any encouragement to a reasonably minded man who intends to purchase the tenure or

holding to do so in the belief that the sale was a rent sale and so create an estoppel against him under the provisions of Section 115, Evidence Act.

The view I take is in accord with the decision of the Judicial Committee in the case of Sarat Chunder Dey v. Gopal Chunder Laha [1892] 20 Cal.

296. The finding of the Munsif in the present case, on which the respondent relies, is clearly the statement of a legal position and nothing more. For

the reasons given above, I am of opinion that no question of estoppel can possibly arise in this case and that the view upon which the Courts below

have proceeded is wrong.

8. In this view of the matter I would allow the appeal and, setting aside the decisions of the Courts below, direct that the execution do proceed

against the tenure now in the hands of the respondent. The appellant will be entitled to her costs in these proceedings throughout, the hearing-fee in

this Court being assessed at one gold mohur.

Rankin, C.J.

9. I entirely agree. With reference to the case to which my learned brother has referred, namely Jabed Ali Taluqdar v. Surendra Nath

Bandopadhaya, I desire to add that it appears to me that the view taken by B. B. Ghose, J., was correct, since, in cases where a cosharer landlord

has been impleaded and has taken no part in the proceedings, there is no room for the doctrine of equitable estoppel by standing by. What is that

doctrine ? It is the doctrine set forth in B. 115, Evidence Act. In the case of Sarat Chunder Dey v. Gopal Chunder Laha [1892] 20 Cal. 296 to

which my learned brother has referred, after carefully considering the word ""intentionally""" as it appears in that section, Lord Shand says this:

A person who, by his declaration, act, or omission, had caused another to believe a thing to be true and to act upon that belief, must beheld to

have done so "intentionally" within the meaning of the statute, if a reasonable man would take the representation to be true, and believe it was

meant that he should act upon it.

10. That is the very highest at which the doctrine can be put. If that standard be applied to the present case and one asks oneself whether it is open

to any auction-purchaser to say that he purchased on the strength of the fact that the cosharer landlord who was impleaded as a defendant took no

steps in the matter and did not inform him as to the existence of the other cosharer landlords and that, relying upon this silence, he proceeded to

purchase, it is obvious that such a case as that is out of all relation to the facts. It was said by Lord Macnaughten : "" Silence is innocent and safe,

when there is no duty to speak"": Chadwik v. Manning [1896] A.C. 231. Even if that proposition is not absolutely and for all purposes true, it is, at

any rate, very necessary to take care that persons are not landed in liability merely because they have not given information to some one over

whose interests they have no duty to take care. In this class of oases,, there is no room for the application of the doctrine of estoppel by standing

by in the absence of some definite and particular conduct on the part of the pro forma defendant other than the mere fact that he has been made a

party and has taken no share in the proceedings. I agree too with the doctrine that was laid down in the case of Rajani Kanta Ghose and Others

Vs. Sheikh Rahman Gazi and Others, . The object of giving notice u/s 158-B, Ben. Ten. Act, is merely that a cosharer landlord, who has an

interest in -the sale being properly and regularly conducted, may look after his own interest and see that the sale is conducted in accordance with

law and so gets the best price. That puts no obligation upon him. It gives him an advantage in the sense that it gives him an opportunity to take a

share in seeing that the sale is properly conducted.