

(1940) 07 CAL CK 0022

Calcutta High Court

Case No: None

Haran Charan Mandal
and Another

APPELLANT

Vs

Hiralal Naskar and
Others

RESPONDENT

Date of Decision: July 30, 1940

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 171

Citation: AIR 1941 Cal 88

Hon'ble Judges: Biswas, J

Bench: Division Bench

Judgement

Biswas, J.

The plaintiffs in this suit in effect claim a statutory lien on an occupancy holding by virtue of a payment made u/s 171, Ben. Ten. Act, to prevent a sale of that holding under chap. 14 of that Act. The suit was dismissed by the trial Court, but on appeal the learned Additional District Judge of 24-Parganas, has given the plaintiffs a decree virtually declaring their lien. The facts which it is necessary to state for the disposal of the appeal may be briefly set out : The holding is said to have been a non-transferable occupancy holding, and admittedly it was held at one time by one Ramanath Mandal. Ramanath died, leaving three sons and heirs, Kshetra, Haran and Paran. Paran died unmarried leaving his surviving brothers as his only heirs and legal representatives. After Ramanath's death therefore the holding came in course of time to be represented by Kshetra and Haran. It is said that in the year 1902 while Paran was still living, Kshetra, purporting to act for himself and as guardian of his two minor brothers, sold away half of the holding to one Nabin. The landlord, however, refused to recognize this transfer. The present plaintiffs are heirs of Nabin, and they have been treated in these proceedings as unrecognized transferees of a portion of the holding.

2. In 1930 the landlord instituted a suit for arrears of rent of this holding for the years 1333 to 1336 B.S., and in due course obtained an ex parte decree. The decree was afterwards sought to be put into execution under chap. 14, Ben. Ten. Act, whereupon the present plaintiffs, claiming to be persons whose interests were likely to be affected by the sale, deposited the decretal amount with costs in Court u/s 170. By virtue of such-deposit they claim to have acquired a statutory lien over the holding, and also to be entitled to possession of it. It is said that they did obtain actual possession as such mortgagees, and in that capacity sued the tenants on the lands, defendants 4 to 6 for rent. The original tenants, the heirs of Ramanath being present defendants 1 to 3 also brought a suit for rent against the same tenants and obtained a decree. This led the plaintiffs to institute the present suit, whereby they asked for a declaration that the decree obtained by defendants 1 to 3 " against defendants 4 to 6 was fraudulent and collusive, and that in any case, it did not affect their interest as the holders of the statutory lien over the tenancy. The plaintiffs also asked for an injunction to restrain defendants 1 to 3 from executing their decree, and further prayed for a refund of a certain sum of money which they are said to have already recovered from the tenants under the decree. The lower appellate Court, while granting the plaintiffs' prayer for declaration, has refused the injunction and the refund.

3. This decree is resisted by defendants 1 to 3 on the ground that Section 171, Ben. Ten. Act, has no application to this case. This position is sought to be supported on a two-folds basis. It is first contended that there was no rent decree at all which could be executed under chap. 14 of the Act, and to avert which deposit could be made u/s 171. Secondly, it is urged that in any event, the plaintiffs being in the position of cosharer tenants, though not recognized by the landlord, were not entitled to make a deposit u/s 170, or to claim the benefit of Section 171 by virtue of such deposit. Either of these grounds, if made out against the plaintiffs, would be enough to dispose of their claim.

4. Having heard the learned advocates on both sides, I have come to the conclusion that the decree which the landlord obtained for rent of the holding was not a rent decree at all, and that "it would not therefore attract the operation of any of the sections of chap. 14. The decree is Ex. A in the case, and on the face of it, it purports to be directed against "Ramchandra and Nabin Chandra Nasker, sarbarahakar Sree Kshetra Mandal". The learned advocate for the respondents contends that it was a decree against Kshetra Mandal alone, and that the names of Ramchandra and Nabin Chandra Naskar were a mere description of the holding in respect of which Kshetra Mandal was said to be sarbarahakar. The learned Additional District Judge says that there is no evidence to show who these persons Ramchandra and Nabin Chandra Naskar are, or whether they are the names of living or dead persons, nor is there anything to show whether Ramchandra is a mistake for the name of the original tenant Ramanath, as the learned Munsif seems to think, or whether Nabin Chandra Naskar is the person whose heirs the present plaintiffs claim to be. There

is, again, no evidence to show when or how this tenancy, which admittedly belonged at one time to Ramanath, came to be held by Ramchandra and Nabin Chandra Naskar, as the learned advocate for the appellants would have it. The materials on the record are in fact wholly insufficient to enable the Court to come to any definite conclusion as to whether the decree was at all obtained against Kshetra Mandal as a tenant, much less as the sole tenant.

5. Leaving aside speculation, and going upon the facts which have been found or are admitted, it seems, however, to be established beyond doubt that after the death of Ramanath, the original tenant, this Jama devolved on his sons, and that after the death of one of these sons, it came to be held by the two surviving sons, Kshetra and Haran. There can be no question that Haran did not lose his interest in this holding in the year 1930 when the landlord brought his rent suit. Haran was in fact joined as a defendant in a rent suit for a subsequent period. It follows therefore that at the date of the decree, Ex. A, Haran, at all events, was a person who was interested as a tenant in the holding, the other person so interested being his brother Kshetra. Now, on the face of it, the decree, if we are to accept the interpretation which is put upon it by the learned advocate for the respondents, is not against Kshetra as a tenant but against him only as a sarbarahakar. Even if this description is supposed to be wide enough to implead him in his capacity as a tenant, the fact still remains that Haran is not made a party to the suit. It is urged that although Haran was a person interested, he might not still have been joined as a defendant inasmuch as Kshetra alone was capable of representing, and did actually represent, the entire holding. This is nothing more than a mere assumption, and does not cease to be such because of the dakhilas in which Kshetra is described as sarbarahakar. This much is clear, that at the date the landlord brought the suit for rent in 1930, it could not be said that the landlord was unaware of the fact that there were other heirs of the original tenant still alive, who were therefore entitled to be made defendants in the suit, if the decree to be passed was to have the effect of a rent decree under chap. 14, Ben. Ten. Act.

6. Much reliance was placed on behalf of the respondents on a so-called finding of the learned Judge in the Court below to the effect that the tenancy was fully represented in the suit against Kshetra. It is however not possible to accept this as a proper or legal finding of fact which is binding on me in second appeal. For one thing, it purports to be based on a view expressed by the learned Judge which is manifestly untenable. This is what he says:

It does not appear that anyone else (besides Kshetra) was recognized as tenant when the rent suit in question was instituted. Nor does it appear that the landlord was bound . to recognize anyone else as a tenant at that stage.

7. This wholly ignores the existence of Haran as a co-heir with Kshetra, and, in my opinion, it is quite enough to vitiate the finding on which the learned advocate relies. Reference was made by him to a decision of Sir Lawrence Jenkins in

Chamatkarini Dasi v. Triguna Nath Sardar ("13) 17 CWN 833 in support of the view that it is open to a landlord to implead only one of a number of tenants in a rent suit without losing his rights under chap. 14, when that tenant is put forward by the rest as their representative. It is enough for me to point out that the proposition laid down in this case rests on a foundation which no longer exists by virtue of later amendments of the Act, and particularly the enactment of Section 146A. Apart from this, it is worthy of note that this is contrary to the spirit, if not the letter, of the decision of the Full Bench in [Kailash Chandra Mitra Vs. Brojendra K. Chakravarti and Others](#), . In the present case, it is not shown that the landlord had actually joined as defendants in his suit all the persons whose names were borne in his rent-roll as tenants. The fundamental condition for invoking the principle of representation u/s 146A was thus lacking. And in that view, the learned Judge, in my opinion, was wholly wrong in proceeding on the basis that the entire body of cosharer tenants had been represented by Kshetra. The first ground urged by the appellants must, therefore, succeed, and as I have said, this is sufficient to dispose of the suit.

8. As the other point has, however, been argued by the learned advocate for the appellants, I might just as well indicate my opinion, although it is not necessary for the purposes of my decision to express any final conclusion. I do not accept his view that the plaintiffs, assuming that the sale of the holding was a sale under Ch. 14 of the Act, were not competent to make a deposit u/s 170 or claim the rights of statutory mortgagees u/s 171. I see no reason why, treating them as unrecognized transferees of a non-transferable holding, the transfer having taken place at a time when such holdings had not been made transferable by statute, they should not be held to come within the words "persons whose interests are affected by the sale." The Full Bench case in *Dayamoyi v. Ananda Mohan* ("15) 2 AIR 1915 Cal 242 and the Special Bench case in [Chandra Binode Kundu Vs. Sheikh Ala Bux Dewan and on his death one of his heirs and Legal Representatives, Samartaban Bibi and Others](#), , leave no doubt that a purchaser of a non-transferable occupancy holding, either in whole or in part, does acquire an interest in the holding which is operative against the raiyat and against the rest of the world except only the non-assenting landlord. It is also clear that on the sale of the holding in execution of a rent decree, the interest of such a person would be extinguished. That being so, it is difficult to see why the plaintiffs cannot be said to come within the category of persons whose interests are affected by the sale within the meaning of Section 170 or Section 171 as well as of Section 174, in which the same words are used. I may refer in this connexion to the decision of Mitter J., in a case reported in *Dayaluddin Sirkar v. Azimuddin Mondal* ("36) 41 CWN 255, where the same view has been held regarding the use of this expression in S.174. Mr. Ghose on behalf of the appellants argued that the remedy of persons in the position of the plaintiffs really lay in a suit for contribution. Whether or not they can claim contribution is a somewhat debatable point which it is not necessary for me to discuss here; but it is neither inequitable nor inconvenient to give such persons a statutory lien over the property which they

save by their payment, so that they can recover from the property itself, if not from the tenant personally for whose benefit they profess to act. You may not thrust a benefit on an unwilling party, but you may fairly hold the property itself liable to the extent to which you have contributed to save it. However, I must resist the temptation of being enticed into a discussion of this interesting topic, which might possibly be reserved for a more suitable occasion.

9. The result is that this appeal succeeds on the first ground I have indicated, and the judgment and decree of the learned Additional District Judge must, therefore, be set aside and those of the learned Munsif restored. The appellant will be entitled to the costs of this Court and of the lower appellate Court.