Sukh Lal Shah Vs Prosanna Kumar Shaha and Another

Court: Calcutta High Court

Date of Decision: Jan. 7, 1926

Citation: AIR 1926 Cal 1199

Hon'ble Judges: Cuming, J; B.B. Ghose, J

Bench: Full Bench

Judgement

B.B. Ghose, J.
This is an appeal against a judgment of my learned brother Mr. Justice Chakravarti by which he modified the decision of

the Subordinate Judge. The facts relevant to the present appeal may be shortly stated thus: The plaintiffs allege that the defendant''s predecessor

was granted a lease of a piece of land as a homestead in about 1850, that the predecessors of the defendant and after them the defendant have

been in possession since then and the plaintiffs served upon the defendant a proper notice to quit and on that the tenancy has terminated. The

plaintiffs therefore brought the suit for the purpose of ejecting the defendant from the land.

2. The defendant raised several objections, but the plea which it is now necessary to state was that the defendant had taken in the year 1916 a

certain piece of agricultural land in the same village from some other landlord which he had been holding as a raiyat. He therefore claimed that his

tenancy with regard to this homestead should be governed by the provisions of Section 182 of the Bengal Tenancy Act.

3. The Munsiff passed a decree in ejectment in favour of the plaintiffs. On appeal the Subordinate Judge has reversed that judgment and dismissed

the suit. In the course of his decision the Subordinate Judge held, rejecting the defendant''s plea of a permanent tenancy with regard to the

homestead, that the defendant was not a cultivating raiyat in respect of the land in suit and that he could not establish any right under which he was

not liable to be ejected. But in another part of his judgment the Subordinate Judge held, that the defendant having the status of a raiyat under the

Bengal Tenancy Act the incidents of the homestead land in suit were governed by the provisions of Section 182 of the Bengal Tenancy Act and the

notice--alleged to have been served by the plaintiff did not therefore terminate the tenancy.

4. On appeal by the plaintiffs Mr. Justice Chakravarti has varied the judgment of the Subordinate Judge to this extent, namely,

5. that the plaintiffs were held entitled to a declaration that they were the owners of the land in suit in Miras howla right as alleged in the plaint and

that the defendant was not a cultivating raiyat in respect of the disputed land and that the defendant had not established any non-ejectable right as a

tenant and also that the tenancy was for habitation and was liable to be terminated by a proper notice to quit.

6. The defendant appeals against that judgment and his contention mainly is that the declaration that the defendant has not established any non-

ejectable right as a tenant and also that his tenancy is liable to be terminated by a proper notice to quit should be expunged. He has no objection to

the declaration of the plaintiffs'' right to the land as owners in Miras howla right. In fact he has urged that the defendant never disputed the plaintiffs

right.

7. Mr. Justice Chakravarti has held that Section 182 of the Bengal Tenancy Act has no application to this case. His reasoning is that the

defendant''s interest in the homestead as between himself and the plaintiffs was created long before the Bengal Tenancy Act came into operation

and the defendant having taken under some other landlord a piece of land as a raiyat more than 70 years after the homestead land had been taken,

the origin of the tenancy of the defendant with regard to the homestead could not be affected. The difficulty in accepting this view of the law arises

on account of the general terms of the provisions of Section 182 of the Bengal Tenancy Act which provides that:

when a raiyat holds his homestead otherwise than as a part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be

regulated by local custom or usage and subject-to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

8. In order to decide the question whether the section applies to a particular set of facts we have first to see whether the tenant is a raiyat; and

secondly whether he holds his homestead otherwise than as a part of his holding as a raiyat. There can be no dispute in the present case that when

the controversy between the parties arose in this suit the defendant was a raiyat and the homestead which is the subject-matter of the suit was not

held as a part of his holding as a raiyat. Evidently, therefore, the section as it stands applies to the case of the defendant.

9. It has been argued on behalf of the respondents that the result of so applying Section 182 to the facts of the present case would be anomalous,

because when the land was let out long before the enactment of the Bengal Tenancy Act neither of the parties contemplated that the incidents of

the tenancy should be governed by such a provision as this. As a matter of fact they might have contemplated that the incidents should be governed

by any contract that might have subsisted between the parties. By the application of Section 182 the position of the landlords would be injuriously

affected, and a result would follow which was never contemplated by the parties giving a benefit to the defendant to which he was not entitled. It

has been pointed out in various cases that the application of Section 182 of the Bengal Tenancy Act to particular cases may give rise to anomalous

results. But that cannot be helped if the plain terms of the section apply to a particular set of facts. The rights derived from a contract have been

abrogated with regard to the homestead land of a raiyat without any exception as to pre-existing contracts under the provisions of the Bengal

Tenancy Act, although under Sections 178 and 179 certain other rights have been excluded, from the operation of this Act. It, therefore, follows

that it must beheld that the incidents of the tenancy with regard to the homestead land in suit are governed by Section 182 of the Bengal Tenancy

Act.

10. The result, therefore, is that the declaration made in the judgment of Mr. Justice Chakravarti that the defendant is not a cultivating raiyat in

respect of this land and he has not established any non-ejectable right as a tenant, and also that the tenancy is liable to be terminated by a proper

notice to quit must be deleted. With this modification the declaration made by him as regards the ownership of the plaintiffs will stand.

11. The appellant is entitled to the costs of this appeal and also of the hearing before Mr. Justice Chakravarti, because the defendant never denied

the ownership of the plaintiffs.

Cuming, J.

12. I agree.