(1925) 12 CAL CK 0041

Calcutta High Court

Case No: None

Kinu Shaikh (Molla) and Nirode Krishna Ghose		APPELLANT
	Vs	
Raj Kumar Ghose and Another		RESPONDENT

Date of Decision: Dec. 22, 1925

Citation: AIR 1926 Cal 1160 : 96 Ind. Cas. 588

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

Bench: Division Bench

Judgement

Cuming, J.

These two appeals arise out of a suit for recovery of possession. The plaintiffs'' case was as follows: The plaintiffs are the purchasers of a certain ganti right. Under the ganti was a certain occupancy holding of which the tenants were one Menajuddi and his nephew Kinu. They sold the holding to defendant No. 1, the. benamidar of defendant No. 3. Menajuddi and Kinu and on Menajuddi''s death his daughters, defendants Nos. 4 and 5 remained in possession as under-ryots under defendant No. 3.

2. Menajuddi and Kinu had no transferable right in the holding and hence the sale had the effect of an abandonment of the holding and plaintiffs are entitled to re enter.

3. The defence was that (1) the interest of Menajuddi was a transferable one, (2) that defendant No. 3 obtained recognition after the purchase and that at any rate, the landlord was not entitled to khas possession or in other words to eject defendants Nos. 4 and 5 the original tenants as they continued in possession after the sale.

4. The first Court found, that defendants Nos. 4 and Shad no transferable interest in the land, that it had not been proved that defendant No. 3 had been recognized by the landlord. He found that it had not been proved that the defendants Nos. 4 and 5 repudiated the tenancy under the plaintiff and so there had, been no abandonment.

Plaintiff was entitled to have his title to the land declared and to get rent from defendants Nos. 4 and 5.

6. endant No. 3 and plaintiff both appealed to the District Court. The learned Subordinate Judge held that the interest of Menajuddi in the land was a nontransferable one, that defendants Nos. 4 and 5 had repudiated the tenancy and abandoned the land.

7. Hence he decreed the plaintiffs'' appeal and dismissed the appeal of defendant No. 3 and decreed the whole of the plaintiffs'' case.

8. Both defendant No. 3 and defendants Nos. 4 and 5 have separately appealed.

9. They both contend that in the circumstances of the case the plaintiff is not entitled to re-entry on the land. The section of the Bengal Tenancy Act which deals with the right of the landlord to reentry and the circumstances under which he is entitled to re-entry is Section 87.

10. The section provides that if a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for the payment of his rent as it falls due and ceases to cultivate his holding either by himself or by some other person, the landlord may at any time after the end of the agricultural year enter on the holding and let it to another tenant. It has been held that the section is not exhaustive and that it only provides for the cases in which a landlord can re-enter without bringing a suit. It is open to the landlord to proceed by way of a suit if he can prove that the facts and circumstances of the case lead to the inference of abandonment. Saviujan Roy v. Munshi Mahton 4 C.W.N. 493, Ram Pershad Koeri v. Jawahir Roy 7 C.L.J. 72 : 12 C.W.N. 899 and Matookdhari Shukul v. Jugdip Narain Singh 28 lad. Cas. 343 : 19 C.W.N. 1319 : 21 C.L.J. 261. As to whether Section 87 is or is not exhaustive, I do not propose, to discuss, for, the question has not been raised in that form before us and I reserve my decision on this point to another occasion when the question has been properly raised and argued. I shall now proceed to deal with the present case in, the light of the various decisions. The sheet anchor of the appellants'' case is the case of Romesh Chandra Mitra Vs. Daiba Charan Das, . In that case the entire occupancy jote was sold and the ryot took settlement from the vendee of some culturable plots and also of the holding. Pie no longer paid rent to his original landlord but there was nothing to show he refused to do so. The landlord did not recognize the purchase. The purchase was at an auction-sale in execution of a money-decree against the tenant. It was held that the landlord could not eject the transferee as on the facts found, there had been no abandonment or repudiation of the tenancy by the tenant. Rankin, J., would seem., to hold that the sale of a non-transferable occupancy holding which the ryot continued to cultivate as an under-ryot did not of itself constitute abandonment. The learned Judge would seem to rely, if I understand him rightly, for the definition of abandonment, on Section 87 of the Bengal Tenancy Act. He then discusses whether there had been

relinquishment or repudiation. He held there was no, suggestion of relinquishment. As to repudiation he held that to enter into an agreement with the transferee to hold under him a portion of the holding sold in execution of six money-decrees did not amount to the repudiation of the tenancy under his original landlord.

11. I may here note that, this case is so far distinguishable from the present case that the sale in that case was involuntary whilst in the present case it was voluntary Dayamoyi v. Ananda Mohan Roy 27 Ind. Cas. 61 : 42 C. 172 at p. 223 : 18 C.W.N. 971 : 20 C.L.J. 52. From the decision in Romesh Chandra Mitra Vs. Daiba Charan Das, the principle may be gathered that the sale by a ryot of a non-transferable jote which he continues to cultivate does not constitute abandonment and also the further principle that the transferee cannot be ejected so long as the landlord has not the right to eject the original tenant. In the case of Monmatha Kumar Ray Vs. Josada Lal Podder and Others, it was held that mere transfer, apart from other considerations, does not give the landlord the right to reenter. With great respect to the learned Judges I may say that I find considerable difficulty in agreeing to the proposition that a ryot could sell his interest as a ryot and remain on the land as an under-ryot and be not considered to have abandoned the holding. Holding is denned as the parcel or parcels of land held by a ryot and forming the subject of a separate tenancy. The expression ''ryot'' in the Act does not include under-ryot (see Section 4, Bengal. Tenancy Act) and when the Act uses the expression ''ryot'' it means ryot and not under-ryot. Therefore, a holding is the parcel of land held by a ryot. When the ryot'' becomes an under-ryot he is no longer in possession of the holding because it is only land held by a ryot that can be described as a holding. It would seem, therefore, that by becoming an under-ryot he has abandoned his holding. Probably the present position has been arrived at because the distinction between a ryot and under-ryot and the fact that in the Bengal Tenancy Act the terms are not inter-Changeable has not always been kept in mind. Possibly it may be argued that so long as he remains in the village and his vendee pays the rent that he was still residing in the village and has arranged for the payment of rent although he is not cultivating his holding any longer but his vendee''s holding. Mr. Mitter who has appeared oh behalf of the respondent-landlord has argued that the present case is distinguishable from both these authorities. He contends that in the present case the tenant has repudiated his tenancy under the landlord and argues that in such circumstances the landlord is entitled to reenter. To prove the repudiation he relies on the defendant''s own case in his written, statement which was that he had sold the holding which was transferable as he had every right to do. Mr. Mitter relies on the case of Kali Charan Ghosh v. Arman Bibi 4 Ind. Cas. 473 : 13 C.W.N. 220 : 5 M.L.T. 276. That case was very similar. The learned Judge remarked (page 223 Page of 13 C.W.N.[Ed.]): "Of course it is true that the transfer of a nontransferable holding does not work a forfeiture. It is true, too, that defendants Nos. 1 to 3 have not given up occupation of the land as they are still cultivating it. But it appears from their written statement that they have repudiated the relationship of landlord and tenant

which formerly existed between them and the plaintiffs. They did not raise the plea that their rights were not transferable and that they were willing to pay rent to the plaintiffs as before. On the contrary they pleaded that their interest was transferable and had been transferred and so they were in occupation of the land as under-tenants of the transferees the defendants Nos. 4-6 and not as the tenants of the plaintiffs.... In these circumstances they have by their own act put an end to the relationship of landlord and tenant which formerly existed." There is little, if anything, to distinguish the case, from the present one.

12. It has been contended that the repudiation must be before suit. Perhaps if there had been no suggestion before the written statement the contention might have some weight.

13. But it seems to me that the statement in the written statement may be relied on as showing what the defendants intended by their former acts. In the case of Kali Charan Ghosh v. Arman Bibi 4 Ind. Cas. 473 : 13 C.W.N. 220 : 5 M.L.T. 276 the learned Judges use the expression that the defendants by their own acts and pleadings have put an end to the relationship of landlord and tenant. I agree with the lower Appellate Court that the defendants Nos. 4 and 5 have repudiated the tenancy between themselves and the plaintiff.

14. As I understand the decision of Romesh Chandra Mitra Vs. Daiba Charan Das, , even though there has been no abandonment, repudiation by the original tenant is sufficient to justify the, landlord in evicting him. The present case, therefore, would not seem really to turn on the question of abandonment but whether there had been a repudiation of the tenancy by the tenant. The lower Appellate, Court has held that there has been a repudiation of the tenancy and with that finding I am not prepared to disagree. It seems to me that the plaintiff is entitled to evict defendants Nos. 4 and 5. Clearly, once defendants Nos. 4 and 5 are gone, the transferee has no title as against the landlord.

15. The result is these appeals fail and are dismissed with costs.

Ghose, J.

16. I agree that the appeals should be dismissed. The findings of fact bring the case within the four corners of the case of Kali Charan Ghosh v. Arman Bibi 4 Ind. Cas. 473 : 13 C.W.N. 220 : 5 M.L.T. 276 which the Court of Appeal below has followed. I cannot, however, refrain from expressing my regret that it was ever held, after the passing of the Bengal Tenancy Act, that the unauthorized transfer of a non-transferable occupancy holding gave the landlord the right to recover khas pos session as on an abandonment. The land lord''s right might have been sufficiently safeguarded if it were held that he was not bound to recognize the transferee, but was entitled to hold his recognized tenant responsible for the rent and, to enforce his decree for rent against such tenant by bringing the holding to sale. But the right of the landlord conferred by the cases must now be held to be a part of the law of

the land, and can only be interfered with by the Legislature. This right of the landlord to eject has given rise to a volume of cases in the reports in which subtle distinctions have been made as to where a tenant may be held to have abandoned the holding and where not, apart from what constitutes an abandonment u/s 87 of the Act, distinctions too subtle to serve as any useful guide for the decision of other cases. With great respect, it seems to me very difficult to discover any true principle from them and may one reasonably wish that there were no such cases.