(1909) 06 CAL CK 0038

Calcutta High Court

Case No: None

Jagattara Dassya		APPELLANT
	Vs	
Daulati Bewa and Others		RESPONDENT

Date of Decision: June 28, 1909

Judgement

1. In this suit, the plaintiff, Daulati Bewa, sought to establish her title to an eight annas share of a raiyati holding by right of inheritance.

2. It appears that the holding originally stood in the name of Naraudi Sheikh, the plaintiff''s father-in-law. On his death, it descended to the plaintiff''s husband and to his brother the defendant No. 1. The name of the latter only was recorded as tenant in the landlord''s office. Subsequently, the plaintiff''s husband died leaving his widow, a minor son and a daughter. The two children also died; and, under the Muhammadan Law, the plaintiff became entitled, as between herself and her brother-in-law, to a 4 annas 11/3 pies share of the holding. Her suit, if it succeeds at all, can only succeed to that extent.

3. The only other defendant who need be mentioned is defendant No. 4. She contends that the whole holding was purchased by her at a sale held in execution of a decree for arrears of rent obtained by the landlord of the holding against the recorded tenant.

4. In the Court of first instance, the plaintiff obtained a decree to the extent of her share as above determined. The decree has been confirmed on appeal by the learned Additional District Judge and the defendant No. 4 has appealed to this Court.

5. The judgment of the Additional District Judge rests entirely on the ruling of this Court in the case of Ashok Bbuyian v. Karim Bepari 9 C.W.N. 843. It was there held that there being no law obligatory on tenants who are not tenure-holders to get their names recorded in. the landlord''s sherista for the purpose of perfecting their title, the sale of a jote in execution of a decree for rent obtained against the

recorded tenants does not pass the interest of the tenants whose names are not registered in the landlord''s sherista. The case of Nitayi Behary Saha Paramanick v. Hari Govinda Saha 26 C. 677 was distinguished on the ground that in that case there was a tenure and the tenants were bound to register their names in the landlord''s sherista.

6. We think, however, that the case of Ashok Bhuyiam v. Karim Bepari 9 C.W.N. 843 has been given a significance more far reaching than was intended, and that the language employed in the judgment means no more than that a landlord is not justified in treating the registered tenant of a raiyati holding as the sole tenant merely because his co-sharers in the holding are not registered. The principle of representation is not referred to and there is no necessary implication that that principle cannot apply to a raiyati holding. There is nothing in the case which prevents the whole body of tenants of a raiyati holding electing to treat one of their number as their representative in their dealings with the landlord. But registration is not everything. The fact that only one tenant is registered is merely an item in the evidence upon the question whether he is or is not the representative tenant qua the landlord.

7. In further support of our view of Ashok Bhuyian''s case 9 C.W.N. 843 we may mention that no reference is made to previous cases in which the principle of representation has been applied or treated as applicable to raiyati holdings, for instance Mati Lal Poddar v. Nripendra Nath Roy Chowdhury 2 C.W.N. 172; Ananda Kumar Naskar v. Hari Das Haldar 27 C. 545 : 4 C.W.N. 608; Rupram Namasndra v. Iswar Namasundra 6 C.W.N. 302; Rajani Kant Guho v. Srimutty Uzir Bibi 7 C.W.N. 170. There is also the subsequent case of Afraz Mollah v. Kulsumannissa Bibee 10 C.W.N. 176.

8. Moreover, it may be observed that under the present rent law, as executed in the Bengal Tenancy Act, the distinction between tenures and raiyati holdings in the connection we are now considering has been largely obliterated. It was pointed out in the case of Ambika Pershad v. Chowdhry Keshri Sahai 24 C. 642 that under the Bengal Tenancy Act a suit by a raiyat for the registration of his name in the landlord''s sherista cannot be maintained because it is no longer compulsory for the zemindars to register the name of any tenants in his sherista. The Act, it is said, provides for the official registration of transfers of the rights of permanent tenure-holders and raiyats-holding at fixed rents. But the transfers of occupancy rights are not so registered and there is no provision of law by which they can be registered in the landlord''s sherista. This case was referred to in the case of Motilal Singh v. Sheik Omar Ali 3 C.W.N. 19 where it was held that a se-putnidar is not entitled to sue a dur-putnidar to compel him to register his name in his sherista as the transferee of a se-putni tenure but it is open to him to sue for a declaration of his right as the tenant of the dur-putnidur. The following passage may be quoted from the judgment: "It is clear from a ruling of this Court in the case of Ambika

Pershad v. Chowdhry Keshri Sahai 24 C. 642 that such a suit is not maintainable under the provisions of the Bengal Tenancy Act. The question then arises whether it is maintainable under the provisions of the Putni Regulation (VIII of 1819) or of any other statute. On the whole, we are of opinion that it is not. There is no section in Regulation VIII of 1819 expressly giving a se-putnidar a right to compel his superior talukdar to register his name or a right of suit in case of his refusal to do so. We do not think that Sections 5 and 6 of that Regulation give the plaintiff any such right, the word ''putnidar'' in these sections, in our opinion, not including a se-putnidar and the words other superior " not being applicable to a dur-putnidar. Under the former rent law, a se-putnidar or other defendant talukdar had a right to compel his superior to register his name in his sherista u/s 27 of Act X of 1859 and Section 26 of Act VIII (B.C.) of 1859 but not under the Putni Regulation. Under the former Act, the defendant talukdar could apply to the collector in case of the superior tenant''s refusal to register his name. Under the latter Act, it would appear he might bring a suit in the Civil Court. However this may be, both these Acts have now been repealed in Bengal, and, therefore, it appears to us that the plaintiff has now no right to bring such a suit as the present, and as he cannot bring such a suit under the provisions of the Bengal Tenancy Act, this appeal must be decreed and the suit dismissed on this ground.

9. It was no doubt open to the plaintiff to sue for a declaration of his right as the defendant''s tenant, but he has not framed his suit in this way."

10. The provisions of the Bengal Tenancy Act which are referred to in the former of these two cases as introducing a system for the official registration of permanent tenures are contained in Sections 12 to 18 and it is doubtful whether these provisions were intended so much for the benefit of the superior landlord as for the protection of the tenants under the tenure-holder. Section 16 for instance provides that a person becoming entitled to a permanent tenure by succession shall not be entitled to recover, by suit, distraint or other proceedings, any rent payable to him as the holder of the tenure until the collector has received the notice and fees referred to in the last foregoing section.

11. In the present case the learned Additional District Judge has expressly, and we think, wrongly refrained from considering the question whether the recorded tenant represented the holding in dispute. He is also, we think, mistaken in saying that the case of Rajani Kant Guho v. Srimutty Uzir Bibi 7 C.W.N. 170 enunciates the principle that the landlord is not bound to look beyond his record." The question under the present law is always one of fact, whether the recorded tenant represents the holding or not.

12. In the view we take the decree of Additional District Judge must be set aside and the case remanded to him for the purpose of being reheard with reference to the observations which we have made.

13. Costs will abide the result.