

(1996) 06 CAL CK 0034

Calcutta High Court

Case No: S.A. 276 of 1982

Krishna Pada Samanta

APPELLANT

Vs

Jugal Kishore Mondal

RESPONDENT

Date of Decision: June 28, 1996

Acts Referred:

- Evidence Act, 1872 - Section 116
- Stamp Act, 1899 - Article 31
- West Bengal Estates Acquisition Act, 1953 - Section 6(2)

Citation: (1998) 1 ILR (Cal) 518

Hon'ble Judges: Basudev Panigrahi, J

Bench: Single Bench

Advocate: S.P. Roy Chaudhuri, Anit Kumar Rakshit and Sukdeb Chatterjee, for the Appellant; Sudhis Das Gupta and Jyotirmoy Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

Basudev Panigrahi, J.

This appeal is directed against the judgment and decree passed by the Sub-ordinate Judge, 3rd Court, Howrah in Title Appeal No. 90 of 1980 whereby and whereunder the judgment and decree of the learned Munsif, Uluberia in T.S. 35 of 1980, original suit No. 340/1/75 was confirmed. The facts of this case leading to the instant appeal are stated as follows:

2. It is, inter alia, stated in the plaint that the Defendant No. 1 and his brother who was the proforma Defendant executed a kabuliot on 2nd Baisakh 1370 B.S. for a period of 9 years in favour of the father of Plaintiffs, namely, Debendra Nath Mondal for raising a Bettle Vine measuring 23 decimals of land out of which 12 decimal of land partaining to plot No. 207 and 11 decimals of lands to plot No. 208 in Mouza Antila, P.S. Bagnan, District Howrah. The annual fee was fixed at Rs. 90/-. The Kabuliot was executed by Defendant No. 1 and his brother for construction of a "pan

boroj" with betel plants numbering 31 gachi in plot Nos. 207 and 208. The Plaintiffs' father Debendra Nath Mondal was owning Sthitiban Raiyati rights over the disputed plots. The Defendants were termed as "licensees" under him and separate receipts were granted to them. Out of the said land the Defendant No. 1 used to possess the eastern portion, whereas the proforma Defendant used to possess the other 1/2 from the western portion. Immediately after expiry of the period when the Plaintiffs issued notice against the Defendants to vacate the suit land after revoking their licence and surrender possession on expiry of 30 days from the date of notice; the Defendant No. 1 is said to have not vacated the suit premises. On the other hand, the proforma Defendant had surrendered the western portion of the land along with Bettal Vine to the Plaintiff's father and subsequently executed a confirmatory deed of surrender in favour of the Plaintiffs on January 29, 1975.

3. The Defendant No. 1 has contested the suit, inter alia, stating in his written statement that he and the proforma Defendant Balaram Samanta were the under-rayats in respect of the suit land by virtue of an unilateral lease deed dated July 29, 1945 corresponding to 13th Sravan 1352 B.S. at an annual rental of Rs. 37.50 p. payable according to the Bengali calendar. Thereafter, the annual rent was increased to Rs. 75.00 per year commencing from 1361 B.S. to 1369 B.S. and lastly, it was further increased to Rs. 90.00 from Baisakh 1370 B.S. and every occasion by virtue of unilateral kubaliats. The Defendant No. 1 and his brother Baiaram Samanta had raised a little vine on the suit premises with their own money and they have been in possession continuously since 1352 B.S. Thus they acquired good title in the suit land at the advent of West Bengal Estate Acquisition Act, 1953 and the West Bengal Land Reforms Act, 1955. By virtue of the provisions of the aforementioned Acts the Defendant No. 1 became an absolute owner and has acquired an indefeasible right directly as a tenant under the State. In other words his right was transformed from under rayat to a rayat after the West Bengal Estate Acquisition Act came into force. Whatever the interest the Plaintiffs' father Debendra Nath Mondal had, that became vested in the State of West Bengal after the West Bengal Estate Acquisition Act came into force. He could at best claim compensation from the State Government but in no circumstance can claim ownership over the suit premises.

4. The learned Munsif, after an elaborate consideration of the facts and circumstances and the materials on record, held the Defendant No. 1 and his brother to be mere licensees. The proforma Defendant has already surrendered his right and executed a deed in favour of the Plaintiffs' father Debendra Nath Mondal acquiescing him to be the owner for the suit land. Debendra Nath Mondal being the rayat of the suit premises his right, after vesting of the estate, remained untouched. Therefore, the Settlement authorities, while preparing the R.S. ROS, recorded the Plaintiffs' father as a rayat in respect of the suit land. Thus the Defendant No. 1 being a mere licensee, he has no vested right to continue in possession after expiry of the licence period. Thus the learned Munsif had decreed the Plaintiffs' suit.

5. The Defendant No. 1 having been affected with and aggrieved by the judgment of the learned Munsif preferred an appeal before the Sub-ordinate Judge, 3rd Court, Howrah. The appellate Court has also, while confirming the judgment of the learned Munsif, interpreted the documents Ext. 1, Ext. B and B-1 as the deed of licence. The appellate Court has also, while affirming the findings of the trial Court, had accepted Debendra Nath Mondal as a rayat whose interest could not have been affected by vesting of the estate. Since the Defendant No. 1 was a licensee in respect of the suit land and his licence being determined after expiry of the licence period it was held that the Defendant No. 1 could not remain in possession over the same and thus the Plaintiffs' suit for ejectment of the Defendant No. 1 was decreed.

6. Mr. S.P. Roy Chaudhuri, learned Senior Advocate appearing for the Appellants, has argued that the Defendant No. 1 can not be interpreted as a deed of licence but it was a lease deed. In case this Court would accept the Defendant No. 1 as a licensee, then the Appellants can not have any case in this appeal. In other words, if it is held that the Defendant No. 1 would be a rayat then both the judgment and decree passed by both the Courts are bound to be set aside. Mr. Roy Chaudhuri has maintained that while interpreting a document whether it is a deed of lease or a deed of licence the Court is not entitled to look to the other surrounding circumstances than the Clauses in the deed itself. It was urged that the lease deed was executed as far back as in 1945 which was renewed from time to time and the last of such renewal was from Baisakh 1370 B.S. Therefore, whatever the little interest the Plaintiffs' father had that became vested in the State Government after passing of the West Bengal Estate Acquisition Act.

7. Mr. Sudhish Dasgupta, learned Senior Advocate, appearing for the Respondents, while repelling the contentions of the Appellants has placed Exts. 1 and Ext. B-1 which were admittedly executed by Defendant No. 1 in favour of the Plaintiffs' father. It was vehemently argued that the terms of the deeds leave no ambiguity than to interpret it as a deed of licence. Mr. Dasgupta has further maintained that the land was never given to the Appellants for raising Bettel Vine but they were permitted to raise Bettel Vine upon the suit land and the costs of which was also subsequently adjusted towards the licence fee. Thus, no right was created in favour of Defendant No. 1 much less of a leasee over the suit land. The Defendant No. 1 has also unilaterally agreed to surrender possession of the land with Bettel Vine after expiry of the licence. This Court, while hearing the Second Appeal, should not again permit the Appellants to interpret the document either to be a lease-deed or a deed of licence. Since the final Court of fact has already held the document to be a deed of licence it is no more open to the Appellants to urge that the construction of the document was improper in law.

8. The facts of this case lie within narrow compass as to whether Defendant No. 1 and his brother had executed and subsequently renewed either a deed of lease or a deed of licence. In case it is interpreted to be a deed of licence then the judgment

and decree passed by both the Courts below can not be said to be vulnerable. On the other hand, if the document is construed to be a deed of lease in that case the decree of ejectment passed by both the Courts below cannot be sustained. While considering a document whether it be a lease deed or a deed of licence the language employed in the document has to be carefully considered. The appellate Court in its judgment had considered the import of Ext. B.

9. Mr. Dasgupta, while proceeding with the argument, has urged that in Ext. B the Defendant No. 1 and his brother had agreed to bear the cost for raising Bettale Vine and the costs of such "Pan Boroj" was deducted, from "munafa bhara. Therefore, the costs of raising the Bettale Vine was borne by the Plaintiffs" father and not the Defendant No. 1 and his brother. In the document Ext. B it is stated that the Defendant No. 1 would vacate the premises along with the Bettale Vine to the Plaintiffs" father. It has been stated without any ambiguity that the Defendant No. 1 will not claim any right over said Bettale Vine except enjoy the usufructs from it. From Exts. B, B-1 and B-2 it appears that there are some mentioning of the word "Bhara" at different places. Ext. B-1 was executed before passing West Bengal Estate Acquisition Act. With reference to the context of the word "Bhara" it can safely be said that for the purpose of enjoying the usufructs from the Bettale Vine but not the land. It has to be borne in mind that there is no surer way to misread any document than to read it literally. The intention of the parties has also a great bearing while making the consideration of the terms of the document. In this case Defendant No. 1's father had already surrendered his portion of the land along with Bettale Vine and in addition to it he also executed a deed of surrender in favour of the Plaintiffs" father.

10. Mr. Roy Chaudhuri has laid great stress upon the terms "khajna", "bhara", "jama" and "dakhilas" used in the document. He also placed some portions of the appellate Court's judgment and vehemently argued that the appellate Court held that these expressions will mean only in case where there was a lease and even then how could it again turn round and hold that it was a deed of licence. On a close reading of the expression it is found that at the first blush it would appear that such term is used only when a document is to be accepted as a lease deed but in this case the terms which were employed in the document will unmistakably show that it was a mere deed of licence. Therefore, the expression "bhara" has to be interpreted with reference to other Clauses of the document. In this connection while a document is to be accepted a deed of lease or a licence it is to be seen whether an interest on immovable property was created or only a right to enjoy the fruits was given. In this connection we may refer to the case of [Board of Revenue and Others Vs. A.M. Ansari and Others](#), where it has been held:

It is the creation of an interest in immovable property or a right to possess it that distinguishes a lease from a licence. A licence does not create an interest in the property to which it relates while a lease does. There is in other words transfer of a

right to enjoy the property in case of a lease. As to whether a particular transaction creates a lease or a licence is always a question of intention of the parties which is to be inferred from the circumstances of each case. For the purpose of deciding whether a particular grant amounts to a lease or a licence, it is essential, therefore, to look to the substance and essence of the agreement and not to its form. [Associated Hotels of India Ltd. Vs. R.N. Kapoor,](#) .

The agreements in the present case were for short periods of 9 to 10 months and they did not create any interest in the land. During the short periods of currency of agreement the Respondents were merely granted the right to pluck, cut, carry away and appropriate the enumerated forest produce existing on the land.

Held that the acquisition by the Respondents not being an interest in the soil but merely a right to cut the fructus naturals, the agreements in question possessed the characteristics of licences and did not amount to leases so as to attract the applicability of Article 31(c) of the Stamp Act. [Firm Chhotabhai Jethabai Patel and Co. and Others Vs. The State of Madhya Pradesh,](#) Rel. on [Mahadeo Vs. The State of Bombay,](#)

11. In the proceeding paragraph I have already discussed the Plaintiffs' father had only given the right to enjoy the profits of the Bettel Vine but not the land.

12. Another significant factor can not be lost sight of by mere creation of an unilateral document, i.e. the Kobuliat whether could it be termed as a deed of lease. Such question has arisen for consideration and in one of the judgments in Gayatri Mahapatra v. Pijus Kanti Das Roy 1995 (2) C.L.J. 320 where it was held that the unilateral document is inoperative as a lease deed. Deed of lease is a contractual right and it must be executed by both the parties.

13. In another case of [The State of West Bengal Vs. Shebait of Iswar Sri Saradia Thakurani and Others,](#) it has been held:

Where a tank fishery is the absolute property of the deity but some person is allowed to catch fish therefrom on payment of a fixed and in addition he is under an obligation to cleanse the tank, the arrangement does not constitute a lease within the meaning of the proviso but only a licence. The deity alone in such a case becomes the direct tenant u/s 6(2).

14. Therefore, mere enjoyment of usufructs from the land can not constitute such right to be that of a lessee's interest.

15. Admittedly, land has been recorded in the name of Plaintiffs' father as a rayati. In this connection the Defendant No. 1 deposed that he had showed dakhias claiming to be a tenant in respect of the suit land at the time of RS operation, yet his name was not recorded in the RS ROR as tenant in respect of the suit land. Therefore, it must be amply clear that he was conscious about the settlement operation and claimed as a rayat in respect of the suit land. But the Settlement

authorities had not accepted him to be a rayat and accordingly, recorded the land in favour of the Plaintiffs' father. This is the most formidable point negating the claim of Defendant No. 1 of his tenancy right over the suit land even by the Settlement authorities after abolition of the estate.

16. The last document Ext. 1 admittedly was after the operation of the estate under which the Defendant No. 1 was permitted to raise Bettel Vine. Even in the last document the Defendant No. 1 accepted the Plaintiffs' father to be a rayat. Once having accepted him as a rayat, now the question arises that whether could it be turn round down or deny his title.

17. Mr. Dasgupta has invited my attention that in this case squarely doctrine of tenant's estoppel will come into play. A contracting party, be he a licensee or a tenant can not be permitted to deny the lessor's or the land-lord's title so long as he remains in possession as such. In support of his contention he has relied upon in the case of [Anar Devi \(Smt\) Vs. Nathu Ram](#), where it has been held:

"Doctrine of tenant's estoppel" which governs the relationship of landlord and tenant is founded on a contract of tenancy entered into by them. This doctrine finds statutory recognition in Section 116 of the Indian Evidence Act, 1872. In a suit for eviction by landlord, the tenant is estopped from questioning the title of the landlord because of Section 116. That section applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attornment or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the Matter's title, even when he is sought to be evicted by the latter on a permitted ground.

18. Mr. Roy Chaudhuri then advanced an argument that while hearing the Second Appeal, when the question of construction of a document arises for consideration, it can not be argued by a party that since both the Courts had concurrently held in one way or other such question need not be reconsidered in the Second Appeal. It is true that when a construction- of document is required to be considered, even the Second Appellate Court can go into such question and decide whether the document is a deed of lease or a deed of licence. But on construction of the document, I have hereinbefore held that the said document was a deed of licence but not a deed of lease. The rent receipts submitted by Defendant No. 1 has been extensively considered by the Courts below and the Courts below held that the rent receipts are not genuine. Therefore, it is not open for the Appellant to contend again about the rent receipts in this case. Considering the case of the Appellants from any angle I do not find that there is any merit in this appeal which is, accordingly, dismissed. Thus the judgment and decree passed by the Courts below are hereby affirmed. There will be no order as to costs.