

Nrishingha Kumari Dasi Vs Sisir Kumar Tarafdar

Court: Calcutta High Court

Date of Decision: July 15, 1960

Acts Referred: Bengal Tenancy Act, 1885 " Article 2, 1, 185, 3(18), 5
Limitation Act, 1963 " Article 116
Transfer of Property Act, 1882 " Section 117

Citation: (1961) 2 ILR (Cal) 214

Hon'ble Judges: Renupada Mukherjee, J; N.K. Sen, J

Bench: Division Bench

Advocate: Sarat Chandra Janah and Arun Kumar Janah, for the Appellant; Biraj Mohon Roy, for the Respondent

Judgement

Renupada Mukherjee, J.

This appeal has arisen out of suit for recovery of arrears of rent in respect of a Darputni, tenure Appellant

Nrishingha Kumari Dasi is the holder of the tenure and Respondent Sisir Kumar Tarafdar is her landlord. The admitted rent of the tenure is Rs.

1,290-8. The Plaintiff has claimed this amount for a period of five years beginning from 1356 B.S. and for Ashar kist of 1351 B.S. with road

cesses education cesses and damages calculated at 12½ per cent. The total claim was laid at Rs. 9,295-13.

2. Several defences were taken in the written statement filed in the court below and one item of defence was that the claim for the first two years is

barred by limitation in view of the provisions of Article 2 of Schedule III of the Bengal Tenancy Act. The defence of the Defendant was wholly

negatived and the suit was fully decreed by the trial Court. So she has preferred this appeal.

3. Mr. Sarat Chandra Janah, who argued the appeal on behalf of the Appellant, submitted only one question for our consideration, namely, the

question of limitation. He contended that the Court below committed an error in law in not holding that the special provision of limitation contained

in Article 2 of Schedule III of the Bengal Tenancy Act applies to this case. So the only point which requires our determination in this appeal is

whether a suit for recovery of arrears of rent of Darputni tenure is governed by Article 2 of Schedule III of the Bengal Tenancy Act or by Article

116 of the First Schedule, of the Indian Limitation Act in the matter of limitation.

4. It is an admitted fact that the claim in the present suit is founded on a registered patta bearing the date November 23, 1875 (vide Ext. 7). The

rent reserved under this patta was a sum of Rs, 2,581. It is not disputed that by gradual devolution of interest, the interest of the landlord had

devolved upon the Plaintiff-Respondent and the interest in half share of the Darputni has devolved upon the Defendant Appellant. This suit was

instituted for recovery of arrears of rent in respect of half of the original amount reserved under the patta mentioned above. We have already stated

that the claim relates to a period of five complete years and one kist. Mr. Janah contended on behalf of the Defendant-Appellant, that the claim for

the first two years is barred by limitation inasmuch as according to the provisions of Article 2 of Schedule III of the Bengal Tenancy Act the period

of limitation would be three years from the last day of the agricultural years in which the arrear fell due There can be no question that the claim for

the first five years Would be time-barred if the special provision of limitation referred to above is applicable to this case.

5. Mr. Biraj Mohan Roy, who argued the appeal on behalf of the Plaintiff-Respondent contended on the other hand, that the special rule of

limitation prescribed in the Bengal Tenancy Act would not. apply to this case, inasmuch as the Darputni lease which was originally granted in 1875

was not granted for agricultural purpose but was granted simply for collection of rent from the tenants. He further submitted that the original lease

being a registered one, the period of limitation would be six years according to Article 116 of the First Schedule of the Limitation Act. The primary

question which calls for our determination is whether the lease in question is governed by the provisions of the Bengal Tenancy Act.

6. Mr. Janah submitted on behalf of the Appellant that this Court has consistently and almost uniformly held that a suit for recovery of arrears of

putni rent is governed by the provisions of the Bengal Tenancy Act and following the prior decisions of this Court, we should hold that a suit for

recovery of arrears of rent in respect of a Darputni tenure is also governed by the special provisions of the Bengal Tenancy Act. Mr. Janah

referred us to a case *Burna Moyi Dasee v. Buna Moyi Choudhurani* ILR (1895) Cal. 191 in which it has been held that a suit for recovery of

arrears of rent from a Putnidar is governed by Article 2 of Schedule III of the Bengal Tenancy Act. This decision has been followed in other cases

of this Court, for example, *Rash Behari Lal Mundor v. Tiluckdhari Lal* (1915) 20 C.W.N. 485, *Maulvi Wazed Ali Khan Panee Brojendra Kumar*

Bandopadhyaya (1932) 36 C.W.N. 833. In a recent decision of this Court Mr. Justice Mookerjee sitting singly has referred to several earlier

decisions on this point and has held that a suit for recovery of arrears of Putni rent is governed by Article 2 of Schedule III of the Bengal Tenancy

Act [*Uday Chand Mahatab Vs. Dibakar Sen and Another*,].

7. Mr. Roy drew our attention to the fact that a contrary view has been taken by a Division Bench of this Court in *Munsi Alauddin Ahammed*

Chovdhury v. Tomizuddin Ahamed (1937) 41 C.W.N. 1001, 1006, The main judgment in that case was delivered by Biswas, J. who observed at

p. 1006 of the report as follows:

The better view, accordingly, as I have indicated above, is to hold that the Seagal Tenancy Act applies only to a lease for an agricultural purpose;

and not to a lease which is a lease of agricultural lands, but not for an agricultural purposs.

8. New a putni lease is ordinarily a lease for collection of rents and not a lease for agricultural purpose; so is a Darputni lease of the present

description. If the view expressed by Biswas, J., were to be accepted then certainly an ordinary Darputni lease of the nature with which we are

dealing would be exempted from the operation of the Bengal Tenancy Act and would be governed by the provisions of the Transfer of Property

Act, pure and simple. The special law of limitation prescribed in Article 2 of Schedule III of the Bengal Tenancy Act would not in that case apply

to a suit founded on such a lease. The correctness of the view expressed by Biswas, J. was doubted by Mookerjee, J. in the case *Uday Chand*

Mahatab v. Dibakar Sen Supra.

9. Mr. Roy submitted on behalf of the Respondent that the view expressed by Biswas, J. in *Munsi Alauddin's* case, (*supra*) finds support in a

previous decision of this Court in *Umrao Bibi v. Mohomed Rojabi* ILR (1899) Cal. 205. We have gone through the case. It has been held in trat

case that the mere fact trat a person has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting

rent, is not sufficient to prove that he is a tenure-holder within the meaning of the Bengal Tenancy Act. It must be proved that the land was let out

as a holding for agricultural or horticultural purposes. In that case the land was situate within the municipality of Dacca, and the quantity of land was

also comparatively small. It would appear from the meagre report of "the Case that the Defendants were claiming rather the status of a cultivating

raiyyat than that of a tenure-holder. A person cannot hold land as a raiyyat unless he takes it for agricultural or horticultural purposes. This being the

fact of the case we are of opinion that that case does not support the contention of Mr. Roy that the status of a tenure-holder cannot be governed

by the Bengal Tenancy Act unless he fakes his lease for agricultural purposes. In the above connection Mr. Boy further relied on a Privy Council

decision *Raja Satya Nirajan Chakravarty v. Srimati Sarajubala Debi* (1929) 33 C.W.N. 865, 870. He particularly relied on the following

observation occurring at p. 870 of the report:

It is also contended that this leasehold is not governed by the Transfer of Property Act, having regard to the provisions of Section 117 of the said

Act. But it is hardly necessary to point out that this was not a lease for agricultural purposes as Mentioned in Section 117 of the Transfer of

Property Act which only makes the provisions of the Act inapplicable under certain circumstances. This was the creation of a tenancy for the

purpose of realisation of rent from the cultivating tenants and therefore the provisions of the Transfer of property Act apply to it.

10. In our opinion the above case does not help Mr. Boy in any way. It was held in that case an ijara for the purpose of realisation of rent from

cultivating tenants is not a lease for agricultural purposes and as such it is not exempted from the Operation of the Transfer of Property Act by

Section 117 of that Act. Section 117 of the Transfer of Property Act exempts a lease for agricultural purposes from the provisions of Chapter v. of

the Act with certain limitations. It is one thing to say that a lease is one for agricultural purposes and it is quite different thing to say that a suit

founded on a lease is governed by provisions of the Bengal Tenancy Article Whether a Darputni lease is governed or not governed by the

provisions of Bengal Tenancy Act is to be determined not with a reference to Section 117 of the Transfer of Property Act but with a reference to

the provisions of the Bengal Tenancy Act and to the law laid down by precedents. We have already observed that it is almost the settled view of

this Court that a suit for recovery of arrears of rent of an putni lease is governed by the provisions of the Bengal Tenancy Act. That being so, there

is no reason why a Darpvtni lease should not be governed by the provisions of the same Act.

11. A Darpvtni lease of agricultural lauds comes with in the definition of tenure as defined in Section 5 of the Bengal Tenancy Act. The definition

runs as follows:

Tenure holder means primarily a person who has acquired from a proprietor or from another tenure holder a right to hold land for the purpose of

collecting rents or bringing it under cultivations by establishing tenants on it, and includes also the successors in interest of person who have

acquired such a right.

12. The two expressions ""for the purpose of collecting rents"" and ""bringing it under cultivation by establishing tenants on it"" are distinctive and not

conjunctive. If, therefore, a person takes lease from a proprietor or from another tenure holder for the purpose of collecting rents from tenants of

agricultural lands, he becomes a tenure-holder within the meaning of Section 5 of the Bengal Tenancy Act. Of course the tenants from whom rent

would be collected must be tenants of agricultural lands. Section 1 of the Bengal Tenancy Act lays down the local extent of the Act. The Act has

operation throughout the whole of Bengal with certain exceptions, such as, Calcutta municipal areas, etc. It is not disputed that the present Darputni

lease was given in respect of areas where the Bengal Tenancy Act has its operation. That being so the original Darputni tenure, must be held to be

governed by the provisions of the Bengal Tenancy Act.

13. Biswas, J. expressed a contrary view in the case reported in 41 C.W.N. 1001 to which we have already referred. At p. 1004 of the report he

has observed as follows:

In my opinion the true test to determine whether a lease for collection of rents does not come within the Bengal Tenancy Act, is, not whether the

lands comprised in it are or are not agricultural lands, but whether or not the letting was for agricultural purposes.

14. This view, in our opinion, is contrary to the definition of the word tenure. We may observe that the same learned Judge has expressed himself

as follows in an earlier portion of the judgment at p. 1003:

It may be conceded that the mere fact of the lease being one for collection of rents would not necessarily show that it cannot come within that Act.

15. So the learned Judge was quite alive to the fact that a lease for mere collection of rent may also be governed by the provisions of the Bengal

Tenancy Act. In our opinion such a lease for collection of rent would be governed by the Bengal Tenancy Act if the lands are agricultural and if the

lands are situate in areas where the Bengal Tenancy Act has operation. It is not necessary that in the case of a tenure-holder the purpose of the

lease should also be agricultural. That is not warranted by the definition of the word "tenure-holder" and that is also against the trend of the

decisions of this Court. This view would also find support from a decision of the Patna High Court, *Sri Ram Chandra Naik Kalia v. Ajodhya Singh*

AIR (1935) Pat. 508. Summing up the above we hold that the Darputni lease in the present case is governed by the provisions of the Bengal

Tenancy Act. We are unable to follow the decision in *Munsi Alauddin Ahmad Chowdhury v. Tamizuddin Ahmad* (supra) because it runs counter

to Section 5 of the Bengal Tenancy Act and it also runs counter to previous decisions of this Court. The scope of that decision should not be

extended beyond that particular decision. We may further mention that in the original lease on which this suit is founded, there is a distinct recital

that in case of non-payment of rent the Darputni would be liable to be sold in auction in accordance with Act VIII of 1869 which was the

predecessor of the present Bengal Tenancy Act. It is clear that the parties themselves accepted the position that the lease would be governed by

the provisions of the Bengal Tenancy Act and not by any other Act.

16. In view of what has been stated above it is clear that limitation in the present case would be governed by the special rule of limitation

prescribed in Article 2 of Schedule III of the Bengal Tenancy Act. Although the original lease was a registered one, the Plaintiff Respondent is not

entitled to a larger period of limitation as laid down in Article 116 of the First Schedule of the Limitation Act. This has been laid down in a Full

Bench case *Mackenzie v. Haji Syed Mahomed Ali Khan* ILR (1891) Cal. 1 (P.B.). The correctness of that judgment has been questioned by

Biswas, J., in the case to which we have already referred. But in our opinion there is no justification for doubting the correctness of the Full Bench

decision.

17. In the above connection Mr. Roy contended that the special rule, of limitation prescribed in Schedule III of the Bengal Tenancy Act was

incorporated in the statute by the Bengal Tenancy Act of 1885 and as this lease is of an earlier date, the special rule, of limitation would not be

attracted to it. There is no substance in this contention because Section 29 of the Rent Act of 1869 contains a corresponding period of limitation of

three years.

18. In the result we hold that the claim for the first two years is barred by limitation. The sum claimed for those two years is Rs. 3,147-11. The

corresponding damages would be Rs. 393-7. The total of these two amounts is Rs. 3,541-2. This sum must be deducted from the claim of the

Plaintiff respondent as being time barred. The Plaintiff Respondent can, therefore, get a decree for an amount of Rs. 5,754-11 after deducting the

above figure from his claim.

19. In the result we allow this appeal and we direct that the decretal amount of the court below be reduced to a sum of Rs. 5,754-11. The Plaintiff

Respondent will get proportionate costs in the trial Court. The Defendant Appellant will get costs of this appeal which will be set off from the

decretal amount.

N.K. Sen, J.

20. I agree with the conclusion arrived at in the judgment just delivered by my Lord and the reasons on which they have been based. I, however,

would like to add a few words. The appeal is by the Defendant and the scope of the appeal is, a part of the decree being limited, "to the point of

limitation raised in defence in this case. The point in dispute may be stated thus: whether in the facts proved in the case the tenure in suit is governed

by the Bengal Tenancy Act or whether the Plaintiff's claim in suit for earlier two years is barred by limitation applying the provisions of Article 2 of

Schedule III of the said Act to the facts of this case. If the tenure in suit relates to non-agricultural lands and created for non-agricultural purposes

on the basis of the lease created by fee contract, dated November 23, 1876 in writing and registered, certainly limitation of six years would apply

as provided for under Article 116 of the Indian limitation Act. In other words, if -on the facts of the case the lease created under the aforesaid

contract (the aforesaid registered patta is governed by the transfer of Property Act, the special limitation as provided for in Schedule III of the

Bengal Tenancy Act would not be applicable and the Plaintiff claim with regard to the earlier part of the claim would not be barred.

21. Section 185 of the Bengal Tenancy Act provides that suits specified in Schedule III annexed to the said Act must be instituted within the time

prescribed in that Schedule and every such suit instituted after the period of limitation provided shall be dismissed although limitation has not been

pleaded. The relevant portion of Article 2 of Schedule III of the Bengal Tenancy Act provides for limitation of a suit for the recovery of an arrear

of rent in cases other than the rent deposited by a tenant u/s 61 of the Act, by a sole landlord or entire body of landlords or one or more co-sharer

landlords to be three years, from the last day of the agricultural years in which the arrear fell due. There can, therefore, be no doubt that this special

provision of limitation would be applicable to a suit by a landlord as stipulated in the Bengal Tenancy Act, i.e., the subject matter of the tenancy in

respect of which the arrears of rent are claimed was to be governed by the Bengal Tenancy Act and not under any other general law, viz. the

Transfer of Property Act or otherwise.

22. The tenure in respect of which the Plaintiff's claim in suit for arrears of rent has been made is a Darputni tenure under the Plaintiff's putni

tenure. Under the Bengal Tenancy Act the terms "tenure" and "tenure-holder" have been defined respectively in Sub-section (18) of Section 3

and Sub-section (1) of Section 5 of the Bengal Tenancy Act. From these definitions I do not find that non-agricultural lands are excluded or that

the purposes for letting out to or by a tenure-holder must be purely for agricultural purposes. But from the different gradations of tenancies and

tenants as mentioned in the Bengal Tenancy Act it appears that the primary and principal purposes for which lands are let out and held are meant to

be agricultural lands and not let out generally for non-agricultural purposes.

23. Controversies, however, arose in numerous cases in consideration of the applicability of the provisions for special limitation as mentioned

above or other rights and obligation provided for under the Bengal Tenancy Act whether a particular tenancy is or is not a tenure whether in the nature of a tenure

or otherwise would be governed by the Bengal Tenancy Act. If on the interpretation of the lease creating the tenancy or otherwise upon the facts

proved in the particular case that the tenancy is governed by the said Act, the special provisions of the Act would apply. In the instant case the

tenure in suit as slated above is created by the registered patta, a Darputni Settlement of 14 annas shares in two mouzas in the district of Nadia at

an annual rent of Rs. 2.581 and although the specific nature of the lands has not been described in the lease itself the tenure covered the entire area

of lands of the mahals, cultivated and waste, khamar, raiyati lands, chakran, borij (plantation) jungle, beat, jheel, river, jalkar, drain, etc. etc. The

principal purpose for which the grant was made was for collection of rents from tenants in respect of all these lands within the demised lands. From

the terms of the lease it appear that lands covered by the grant were predominately, if not wholly, agricultural lands and, the purposes of the lease

itself come within the definition of tenure holder"s interest as defined in the Bengal Tenancy Act. No evidence contrary to that has been given by

the Defendant.

24. The learned Subordinate Judge, however, took a different view under some misapprehension caused by the decision of Henderson and

Biswas, JJ. in the case of Munshi Alauddin Ahammed Choudhury v. Tomizuddin Ahammed Supra. It so appeared to the learned Subordinate

Judge upon reading of the said reported decision that if the letting was merely for collection of rents there would be no lease for an agricultural

purpose irrespective of the nature of the land being leased out and the tenancy would not be as in the present case of the Darputni lease for an

agricultural purpose and the special limitation of the Bengal Tenancy Act would not apply and no part of the Plaintiff"s claim in consequence would

be barred by limitation.

25. A reference to the definition of the terms ""tenure-holders" and ""Tenure"" as given in the Bengal Tenancy Act would in my view, at once establish

that if the purposes of a tenancy be simply for collection of rents it would not be excluded from such definition and also excluded from the above

provisions of the Bengal Tenancy Act. It does not appear that the learned Judges in the said reported decision in Munshi, Alauddin"s case (supra)

went so far. Biswas J., delivering the main judgment in that case found on evidence that one of the subject matters of the lease was a non-

agricultural land, viz. hat (village market place) and his Lordship also concluded that the lease was not governed by the Bengal Tenancy Act as it

related only to collection of rent. The aforesaid decision was, however, later on considered by Mookerjee. J., sitting singly in the case of Uday

Chand Mahatab v. Dibakar Sen Supra. In his judgment Mookerjee, J. considered all the long series of decisions and held that Biswas, J.'s opinion

was merely obiter having regard to his own finding as to the nature of lands and cannot in any event override those series of decisions. Earliest of

such reported cases on that point is the case of Iswari Pershan Narain Sahi v. Crowdy ILR (1890) Cal. 469 decided by Trevelyan and Baverly,

JJ. on February 5, 1890. Their Lordships held that in all classes of suits for arrears of rent one period of limitation as provided under Schedule III

would apply. The Full Bench decision of this Court in Mackenzie's case (supra) affirmed the above decision. However, I need not enumerate all

the cases on this point placed before us by the learned Advocate appearing on behalf of the parties. My Lord has dealt with them and I

respectfully agree with the conclusion arrived at by him.

26. In the present case the nature of the lands of the tenancy being undivided 14 annas share of the two mouzas in the mufassal areas of Nadia

District has not been proved on evidence as otherwise than agricultural and also the purpose of the grant by the registered patta creating the

Darputni tenure was principally for collection of rent from raiyats. and other tenants holding generally agricultural lands within the tenure so created.

In my opinion, therefore, the learned Subordinate Judge was under an utter misconception in applying the principles of law, if any, of the case, in

the case of Munshi Alauddin Choudhury v. Tomizuddin Ahammed Supra to the facts of the case and in holding that the Bengal Tenancy Act does

not apply ""even ""though it be a lease of agricultural land or lands with cultivating tenants thereon"".