Durgakanta Majumdar and Others Vs Surendra Prosad Lahiri Chowdhury and Another

Court: Calcutta High Court

Date of Decision: Dec. 11, 1936

Final Decision: Allowed

Judgement

Mukherjea, J.
This appeal is on behalf of the Defendant and arises out of a suit commenced by the Plaintiffs for a declaration that the sale

of a certain Taluk under the provision of Regulation VIII of 1819 is void and inoperative and did not confer any title on the Defendant purchaser

who was himself the zeminder and at whose instance the sale was held. The grounds on which the declaration is prayed for are of a two-fold

character. In the first place, it is alleged that there were various irregularities which vitiated the sale and in the second place, it is said that the

Collector had no jurisdiction to hold the sale inasmuch as the taluk sold could not be a putni within the meaning of that expression as used in

Regulation VIII of 1819 and could not attract the operation of the provision for summary sale as laid down therein. Both the Courts below have

negatived the first contention, but both have concurred in giving the Plaintiff a decree on the second ground, viz., that the tenure in question was not

one which could be sold under the Putni Regulation. As that is the only point which is canvassed in this second appeal, it is necessary to state

shortly the material facts upon which the decision on this point hinges. The Plaintiffs were admittedly ""the proprietors of an eight annas share of a

certain Touzi being Touzi No. 171 of the Rajshahi Collectorate which comprised certain shares of a zemindary. A quarter share of the Plaintiffs''

interest in the zemindary was sold to the Defendant and the Defendant granted a putni of the said one-fourth share to the Plaintiffs on 7th July,

1926, reserving a rental of Rs. 688 odd annas per year. There was a distinct stipulation in the potta that the Defendant would be able to avail

himself of the provisions of the Putni Regulations for realising the arrears of rent. Now it so happens that long before these transactions, the

Plaintiffs" predecessors had granted a putni of their interest in 14 mouzas only to one Bonai Mondal at a rental of Rs. 56 a year out of which Rs.

14 was payable annually in respect of the one-fourth share of these mouzas which the Plaintiffs sold to the Dependant. In the putni potta executed

by the Defendant in favour of the Plaintiffs it was clearly stated that the Plaintiffs would have the right to collect this putni rent from Bonai Mondal

and that the Defendant would not be entitled to object to the same on any ground. The Plaintiffs" putni created by the potta mentioned above was

sold under the Putni Regulation on the 15th September, 1931, and the Courts below have held the sale to be a nullity on the ground that there

could not be in law a putni over the earlier patni of Bonai Mondal and such putnis which are not contemplated by Regulation VIII of 1819, cannot

be sold under its provisions. The propriety of the view has been challenged before us in this appeal and Mr. Hiralal Chakravorty who has

appeared on behalf of the Appellant has pressed the following points for our consideration.

2. In the first place he has argued that the putni potta in favour of the Plaintiffs did expressly exclude the earlier putni of Bonai Mondal, and as such

the Courts below were wrong in holding that there was a putni over another putni. In the second place, he has contended that even if the potta in

Plaintiffs" favour did include the one-fourth share of the 14 mouzas let out in putni to Bonai Mondal there was nothing illegal in the transaction and

there could be in law an intermediate interest between a zemindary and an existing putni to which the provisions of the Putni Regulations can be

made applicable by express stipulation. Lastly, it is said that the Plaintiffs themselves being parties to the document which contains the express

stipulation that the tenure could be sold under Putnti Regulation are estopped in law from questioning it.

3. The first point has apparently no substance. We have gone through the putni potta with some care It purports to create a putni in respect of the

entire one-fourth share which was previously sold by the Plaintiffs to the Defendant and we have no materials to hold that there was any

reservation in respect of the 14 mouzas let out in putni to Bonai either in the sale deed or in the putni lease. Mr. Chakravorty has drawn our

attention to a passage in the kabuliyat which we have already noticed and which is to the effect that the putni rent, from Bonai Mondal would be

realised by the Plaintiffs and the Defendant would not be able to object to the same on the ground that the Plaintiffs hold a subordinate interest

under the potta. If, as the Appellant contends, the putni potta creates an intermediate interest in favour of the Plaintiffs they would be the only

persons entitled in law to realise rent from Bonai Mondal. The stipulation must have been inserted to clear up a doubt or misconception, or

probably those who drew up the deed did not felly appreciate the legal effect of such a subsequent lease. In any view, the passage is of no

assistance to the Appellant and does not support the contention of Mr. Chakravorty that the putni lease made an express reservation in respect of

Bonai Mondal''s interest. We are not also impressed by the last point raised by Mr. Chakravorty. There is no estoppel against law and if in law a

tenure over an existing putni is altogether void and inoperative, no question of estoppel properly arises.

4. This leads us to the second point raised by Mr. Chakravorty and we are of opinion that this contention is sound and should be given effect to.

There is nothing in the policy of the law or custom of the country to prevent the creation of an intermediate interest between a zemindar and a

putnidar. The point was mooted in the case of Rajkumar v. Probal 9 C.W.N. 656 (1904) where it was held that it is open to the zemindar after he

has granted a putni, to grant away a portion of his remaining rights and create a tenure intermediate between himself and the existing putnidar. The

term ""putni,"" observed their Lordships, given to the second lease might no doubt introduce some confusion in the ordinary grades and

nomenclature of sub-infeudation but there was nothing illegal in it and although the first putnidar would not become a darpatnidar with reference to

the second putnidar, the latter may be putnidar in the full sense of the word as between him and the zemindar. This decision is an authority for the

proposition that, provided the grant does not operate in derogation of the right of the previous putnidar, the creation of a subsequent interest, by

whatever name it is called, is not ineffectual or invalid and the holder of such intermediate interest may occupy the position of a putnidar as between

him and the zemindar.

5. In Bibi Jarao Kumari v. Hanifuddin 14 C.W.N. 389 (1909) there is an observation made by the learned Judges at the end of the judgment that

they were inclined to take the view that it was nor competent to the zemindar to create an intermediate interest between him and an existing

putnidar. This observation was a pure obiter, the point not having come up for decision in the case at all, and is expressly held to be so in the later

case of Nilambar Ghosh v. Mir Mehasanuddin 34 C.L.J. 77 (1914). In the same volume there are two other decisions, e.g., Madhu Sudan v.

Debendra Nath 34 C.L.J. 76 (1908) and Johar Mull Bhutra v. Jatindra Nath Bose 34 C.L.J. 79 (1921), both of which recognise the authority of

the zemindar to inter pose an intermediate tenant between him and the existing tenant, though the existing tenant in these case? was not a putnidar.

All these cases were referred to in Parab Bibi v. Beerendra Nath ILR 60 Cal,1092 (1933), and it was held there that an intermediate tenure-

holder created by a zemindar over an existing putni was competent to realise rent from the putnidar. We can, therefore, take it to be firmly

established that it is quite legal and proper on the part of a zemindar to create another tenancy over an existing putni and such intermediate tenant

would be competent, nay would be the only person entitled in law, to realise rent from the putnidar. This position has not been challenged by Mr.

Sen Gupta who appears for the Respondent. His contention in substance is that it may be quite legal for the zemindar to create such intermediate

interest, but such intermediate tenure-holder could not be called a putnidar, nor could such interest be sold under the provisions of Regulation VIII

of 1819. in support of this argument the learned Advocate relies on the case of Rajendra Narayan v. Abu Nasor ILR 50 Cal. 146: S.C. 27

C.W.N. 189 (1922), and as that is the case upon which the Courts below have based their decisions, it 13 necessary to look into the facts of the

case a little closely. What happend in that case is that one Abdur Rahaman who was a zemindar granted a putni of his entire sixteen annas interest

in favour of the predecessors of the Defendants some time in the year 1881. Subsequently, one Bhuban Babu acquired an one anna interest in the

zemindar? and he created a putni in respect of this one anna share in favour of one Amatul Fatima. Bhuban Babu put up to sale this new putni

under Regulation VIII of 1819 and the purchaser was the Plaintiff and the Plaintiff after his purchase sued the Defendant for one anna share of the

rent. The Court below gave him a decree, but this Court set aside the decree and dismissed the suit, holding that the Plaintiff had not acquired any

right to receive rent. One reason assigned by the learned Judges was that Bhuban Babu granted the putni to Fatima ignoring the previous putni of

the Defendants. The interest of Fatima was therefore one which was co-ordinate with and not superior to that of the Defendants and consequently

the Plaintiff as the purchaser of Fatima''s interest could not occupy the position of a landlord as against the Defendant and could not recover rent

from them. If that was the only ground for the decision, it would have no application to the present case inasmuch as the putni lease in favour of the

Plaintiff was not in supersession of the previous rights of Bonai Mondal but expressly gave him superior right over the earlier putnidar. The learned

Judges, however, based their decision on another ground, viz., that the putni sale was totally without jurisdiction as the so called putni of Fatima

being created over an earlier putni was not one which could come within the scheme of Regulation VIII of 1819, or attract the provisions of

summary sale as laid down in the said Regulation. There may be assignment of the rights of the zemindar which would entitle the assignee to sue the

putnidar for rent, but there could be no putni over another putni which must always be a Taluk of the first degree and the zemindar could not under

the law put up to sale under the Putni Regulation the interest of the intermediate lessee whom he has set up over an existing putnidar.

6. We agree with the learned Judges that a putnidar has got a recognised status under the Putni Regulation and there are certain rights and liabilities

which are peculiar to him. There could, strictly speaking, be no putni under a putni and it is to some extent anomalous if we use the exression

putni "" to describe both kinds of interest. But the question is whether the intermediate tenure that is created by the zemindar ever the putni can be

sold under the provisions of the summary sale as laid clown in the Putni Regulation. In our opinion, it can be sold under the regulation provided

there is a distinct agreement to that effect between the zemindar and the intermediate tenure-holder. If we look to the scheme of the Putni

Regulation we find that the provision for summary sale is not confined to putni tenures in the strict sense of the word, but extends to every kind of

saleable tenure, provided there is clear stipulation for such sale in the lease. Secs. (2) to (7) of Regulation VIII describe the special incidents of a

putni Taluk. Sec. 8, cl. (1) gives the zemindar the power to hold periodical sales in respect of any tenure in which the right to sell for arrears is

reserved by special stipulation and cl. (2) clearly makes a distinction between "" talukdar "" and the holders of an interest of the nature described in

cl, (1). Sec. (9) uses the general and comprehensive expression "" saleable tenures"" and the distinction between "" taluk "" and other saleable tenure is

noticeable also in sec. (11). Sec. (3) of Bengal Act VIII of 1865 makes the point quite clear when it lays down that ""The sale for recovery of

arrears of putni taluks and other saleable under-tenured of the nature denned in cl. (1) of sec. 8 of Regulation VIII of 1819 shall be conducted by

the Collector, etc."" We have even cases of non-permanent tenures, where the landlord reserved the right to hold sales under Regulation VIII of

1819 and as an instance of such type of lease we may cite the case of Upendra Lal Gupta v. Jogesh Chandra Roy 22 C.W.N. 275 (1917). In the

case of Rajendra v. Abu Nasor ILR 51 Cal 146: s.c. 27 C.W.N. 189 (1922) we do not see that there was any such stipulation in the putni lease

executed in favour of Fatima. Simply because a tenure is described as putni, which it cannot properly be, would not by itself let in all the rights of

the landlord under the Putni Regulation but whatever be the nature of the tenure, if it is saleable in law and there is a distinct agreement that the

zemindar could put up to sale the tenure under the provisions of the Putni Regulation, the contract, in our opinion, would be perfectly valid, though

it could not operate in any way to the injury of the existing putnidar. The existing putnidar would have his rights intact as under the putni potta and

though it is doubtful whether the intermediate tenure-holder who is not a zemindar could start proceedings under Regulation VIII of 1819 against

him, his position is not in any way affected by it. He is also not affected by any sale of the intermediate interest, as his interest does not come within

the range of encumbrances or annulable interests under sec. 11 of the Putni Regulation. Thus though, in our opinion, the intermediate tenure-holder

could not be called a putnidar, his interest could be sold under the Putni Regulation provided there is a distinct stipulation to this effect and as this

view of the case was not considered in Rajendra v. Abu Nasor ILR 51 Cal 146: s.c. 27 C.W.N. 189 (1922), the decision in our opinion does not

necessarily militate against the view we have taken. Thus our conclusion is that the sale of the Plaintiffs'' interest under Regulation VIII of 1819 is

perfectly valid and the Collector had jurisdiction to hold the sale. The appeal, therefore, is allowed and the Plaintiffs'' sun dismissed with costs

throughout.

M.C. Ghose, J.

I agree.