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(1950) 09 CAL CK 0010

Calcutta High Court

Case No: Appeal from Appellate Decree No. 448 of 1947

Hemgopal Sinha — APPELLANT

Vs

Jitendra Nath Ray — RESPONDENT

Date of Decision: Sept. 7, 1950

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 22(2), 22(3)

Citation: (1952) 1 ILR (Cal) 68

Hon'ble Judges: Mookerjee, J

Bench: Single Bench

Advocate: Bhut Nath Chatterjee and Lala Hemanta Kumar, for the Appellant;Prakash Chandra Bhose, for the Respondent

Final Decision: Dismissed

Judgement

Mookerjee, J.
The property in suit appertains to a jama of Rs. 16-4 standing in the name of Haradhan Mondal and others. Manindra Nath Roy, the father of the Plaintiffs, was one of the co-sharers of touzi No. 310 of the Birbhum Collectorate. The Rs. 16-4 jama was purchased by Manindra Nath. From the materials on the record, it cannot be stated as to when Manindra Nath, as co-sharer Zemindar, acquired this jama held under the different sets of co-sharers. In October, 1928, one Dharanidhar Pal purchased the said jama of Rs. 16-4 in execution of a money decree obtained against Manindra Nath. The sale was confirmed two months later. The cadastral survey record of the mouza in question was finally published in May, 1929. This particular Rs. 16-4 jama was recorded as follows : Manindra Nath was regarded as being in possession u/s 22(2) of the Bengal Tenancy Act. In the remarks column it was noted that Manindra Nath was liable to pay rent to the different sets of co-sharer owners of the touzi. Dharanidhar, the purchaser in the Money Execution Case No. 160 of 1928, obtained possession through the court on October 3, 1931. The same property was sold again in execution of other money decrees obtained against Manindra Nath. In 1932, however, a suit was filed by the different sets of

co-sharer landlords against Manindra Nath for recovery of arrears of rent due in respect of the same jama. The co-sharer landlords recognised the existence of Manindra''s title in the said jama. One Sabitri Prava Sinha, who is Defendant No. 1 in the present case, obtained transfer from one of the purchasers, Nirmal Shib Banerjee and in 1935 she filed a suit for recovery of possession of three plots included within the jama. This suit was dismissed against Dharanidhar on the finding that the Plaintiff Sabitri was out of possession. Radharani who had obtained an unregistered conveyance in December, 1931, from Dharanidhar Pal obtained again a duly registered conveyance on July 16, 1942. The Plaintiff brought this suit in November, 1942, on the allegation that the alleged rent decree in 1932 was not of the nature of a rent decree. The same having the effect of a money decree, Defendant No. 1 had obtained no title as a result of a purchase under the said decree. That it is so is inasmuch as Manindra had ceased to have any interest in the jote as the same was sold in 1928 and purchased by Dharanidhar in execution of a money decree obtained against Manindra.

2. The defence, on the other hand, is that the interest of Manindra in the jote was that of a proprietor of the parent touzi. Manindra being a co-sharer landlord, the jote ceased to exist as such, as soon as Manindra purchased the same. The jote itself not being in existence, Dharanidhar got no title by his purchase in 1928. The Plaintiff, being a transferee from Dharanidhar, has got no title to the jote in question. Both the courts below have decreed the suit. Hence this appeal on behalf of Defendant No. 2.

3. The decision of the principal question raised in this appeal rests on a determination of the nature of the right which had been obtained by Dharanidhar when he purchased the right, title and interest of Manindra Nath in the said jote.

4. Section 22(2) of the Bengal Tenancy Act had been amended from time to time. The nature of the right of the co-sharer landlord when he purchases a subordinate tenancy held under him and the other co-sharers has varied according to the changes introduced in Section 22(2) of the Bengal Tenancy Act.

5. If the merger took place before 1907, according to the then prevailing provisions the occupancy right did not survive after the purchase of the holding by one of the co-sharer landlords. He became a tenant under his other co-sharers and the rent payable to them would be exclusive of the amount which the said . purchaser would have received had the tenancy continued in the hands of the original tenant.

6. If the purchase by a co-sharer landlord had been effected after 1907, the co-sharer landlord could hold the same as a part of his proprietary interest.

7. It is argued, on behalf of the Defendant Appellant, that the interest which was held by Manindra in respect of the said jama was not as an occupancy raiyat, irrespective of the question whether such purchase was before or after 1907. A part of the jama was held by Manindra in the exercise of his proprietary right in the touzi--being that portion of the

interest for which he was entitled to receive rent from the original tenant. In respect of the remaining portion, that was not an occupancy jama. The interest of Manindra in respect of that jama was not one which could be transferred by him independent of his proprietary interest in the parent touzi. Reliance is placed upon the case of Gopi Singh and Others Vs. Jagdeo Singh and Others, , where it was held that if the interest of a co-sharer of the superior title, viz., either of the parent touzi or of a tenure under which a particular holding is held by one of the co-sharers u/s 22(2) of the Bengal Tenancy Act, such interest in the said jama passes to a transferee along with the proprietary interest of the said co-sharer; or, in other words, if a co-sharer landlord sells his proprietary interest in the parent touzi, on such sale the interest acquired by the said co-sharer in respect of a subordinate tenancy u/s 22(5) of the Bengal Tenancy Act also passes.

8. On the facts now before me, this decision is not quite apposite. We are not concerned with the question as to whether the co-sharer landlord transferring his proprietary right as landlord thereby transfers his right in a subordinate tenancy held by him u/s 22(2) of the Bengal Tenancy Act. The point for decision is whether the interest of a co-sharer landlord in a subordinate tenancy governed by Section 22(2) of the Bengal Tenancy Act can be sold by the said landlord to another without transferring his superior proprietary interest. Does such a jama lose all existence and by the rule of merger the landlord alone becomes entitled to possess the same? Is it inalienable? Is it a property belonging to the said co-sharer which has got a separate existence and may be sold by such co-sharer? Can it be attached and sold in execution of a decree obtained by a third party against the said co-sharer landlord?

9. We may test the interpretation of Section 22(5) of the Bengal Tenancy Act as made by the defence with reference to certain concrete cases. If it be held that on a co-sharer landlord getting an interest in part of a holding the jote ceases to exist as such, we must hold that if there is a default by the said landlord his other co-sharers will not be entitled to realise the arrears on the basis that the same is a charge on the holding. It is inconceivable that a co-sharer landlord obtaining an interest in the holding thereby destroys the rights of the other co-sharer landlords in respect of the tenancy.

10. Section 22(3) of the Bengal Tenancy Act merely makes provision about the right which the co-sharer landlord purchaser of the holding has after his purchase.

11. Although there are decisions, referred to above, to the effect that, if a landlord sells away his proprietary interest in the estate he thereby transfers his right in a holding which he has got u/s 22(2) of the Bengal Tenancy Act, no authority has been placed before me which goes to the length of laying down the proposition that the co-sharer landlord, who has certain rights in respect of a tenancy u/s 22(2) of the Bengal Tenancy Act, cannot settle any tenant under him on that property or that he cannot dispose of his interest in the said property in favour of a third person.

12. He has a right to property in respect of what was previously a tenancy held by the original tenants under all the different sets of co-sharer landlords. The co-sharer purchaser of such a tenancy has got certain limited rights but thereby the rights of the other landlords are not affected in any way. That appears to have been the intention of the legislature, otherwise direct and definite provisions would have been made prohibiting the provisions of the Bengal Tenancy Act from being attracted to such properties held by such a co-sharer landlord.

13. It must, therefore, be held that the conclusion reached by the courts below is correct.

14. This appeal is accordingly dismissed with costs.

15. Leave to appeal under Clause 15 of the Letters Patent prayed for is refused.