(1934) 11 CAL CK 0022

Calcutta High Court

Case No: Appeals from Original Decrees Nos. 160 and 161 of 1931

Hemlata Debi		APPELLANT
	Vs	
Maharaja Srish Chandra Nandy Bahadur and Others		RESPONDENT

Date of Decision: Nov. 30, 1934

Final Decision: Dismissed

Judgement

D.N. Mitter, J.

This is an appeal on behalf of the Plaintiff Hemlata Debi and arises in a suit brought by her for establishing her title to 11 items of property. Her title is based on a purchase in execution of a decree for maintenance by which certain properties were charged for the maintenance of the Plaintiff. The relationship between the parties to the suit appears from a geneological tree which is to be found at page 152 of the first part of the paper book in appeal No. 305 of 1929. It appears that Krishna Gobinda Baksi executed a deed of ekrarnama in favour of the present Plaintiff an the 27th March, 1897. That deed has been marked as Ext. I in the case and is to be found at page 18 of the Part II of the paper book. By this ekrarnama Krishna Gobinda promised to give a maintenance of Rs. 42 a month to the Plaintiff and Rs. 5 to her daughter, Radha Piyari Debi. To secure this right the share of Ram Gopal Baksi, that is the husband of the present Plaintiff, in 58 items of properties was charged. The maintenance fell into arrears and Hemlata brought a suit for recovery of arrears of maintenance which was suit No. 18 of 1910. That suit was decreed on compromise on the 13th June, 1910. That decree has been marked as Ext. 3 and is to be found at Part II, page 60 of the paper book. The decree charges 58 items of property, as has already been said, but Krishna Gobinda was made personally liable as the money due on the decree was not paid. Hemlata, the present Plaintiff, put the decree into execution and in that execution case she purchased certain shares in several items of the 58 properties, not the shares which were charged but the shares of Krishna Gobinda in the said properties. The suit relates to 11 of those properties which are mentioned in the sale-certificate which is to be found at page

91, Part II, and which has been marked as Exhibit 5 in the case. The principal Defendants to the suit were 5 in number:--(1) Bhabani Charan Roy who is the purchaser of these properties at a sale in execution of a decree for rent, (2) Nirmala Prova Debi and (3) Joy Gobinda Baksi who are Krishna Gobinda''s heirs, (4) Kali Prosanna Bakshi, a co-sharer of the Plaintiff''s husband and lastly the Cossimbazar Estate represented by the Court of Wards. With respect to the 11 items of properties which are included in properties Nos. 1, 4-19, 22 and 58 of the sale-certificate already referred to, all the 11 items excepting item No. 40 are tenures which were held under the Maharaja of Cossimbazar. The Maharaja of Cossimbazar brought all the 11 items except item No. 40 to sale in execution of a decree for rent. The rent sale took place on the 7th April, 1915, some three months after the purchase by the Plaintiff at the rent (?) sale. The purchaser was one Bhabani Charan Roy, one of the principal Defendants in the suit. The contention of the Plaintiff was that these tenures were permanent tenures and as the landlord brought a suit without impleading all the parties, the sale was not a rent sale but a sale which merely passed the right, title and interest of the tenants which had already passed to the present Plaintiff. On the other hand, the contention on behalf of the Defendants was that these tenures were non-permanent tenures and non-heritable. The Subordinate Judge has dismissed the suit of the Plaintiff in which this appeal arises and which was suit No. 21 in the Court below on the ground that the tenures were non-permanent and non-heritable tenures and that the sale by the landlord must prevail as against the purchase of the present Plaintiff and that on the confirmation of those rent sales the Plaintiff''s title as prior auction-purchaser absolutely ceased. He accordingly dismissed the Plaintiff''s suit. Against this decision the present appeal has been brought and two contentions were put forward in the beginning on behalf of the Appellant by Mr. Gupta who appears for her. It was argued in the first place that assuming that the finding of the Subordinate Judge that these tenures are non-permanent tenures is correct, the special procedure for sale under Chap. XIV of the Bengal Tenancy Act does not apply to non-permanent tenures. His contention is that Chap. XIV only applies to tenures of the kind described in sec. 65 of the Bengal Tenancy Act, viz., permanent tenures and that therefore the Plaintiff''s purchase, being prior to the purchase by Bhabani in execution of the landlord''s decree for rent, must prevail.

2. The second contention which was put forward at the beginning of the argument is that as all the parties who held the tenancies of a permanent nature had not been impleaded in the sale by the Maharaja of Cossimbazar, it was not a rent sale. It is sufficient to state here that the second ground which was raised in the beginning was abandoned in the course of the argument and the decision of this Court is invoked on the footing that the finding of the Subordinate Judge that the tenures are non-permanent and non-heritable must stand. It becomes necessary therefore to consider the first contention and nothing more need be said about the second contention which has been abandoned.

3. The only question, therefore, raised by this appeal depends on the construction of the two sections of the Bengal Tenancy Act, namely, secs. 65 and 158B which corresponds to sec. 159 of the Bengal Tenancy Act, as amended in 1928. The Subordinate Judge was of opinion that there is nothing in sec. 158B to limit its provisions to the case of permanent tenures. The language of sec. 158B which corresponds to sec. 159 of amended Act is this:--

Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as ''protected interests'', but with power to annul the interests defined in this chapter as incumbrances.

4. It is not necessary to quote the proviso here. It is the view of the Subordinate Judge that the word "tenure or holding" must, having regard to the generality of the expression used, refer to all kinds of tenures, permanent or non-permanent. Sec. 159, however, has to be read along with the previous provisions in sec. 65 of the Act. Sec. 65 runs as follows:--

Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or a occupancy raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

5. Then follows sec. 66, to which it is also necessary to refer, which lays down the remedy in the case of tenures which are not covered by sec. 65. Sec. 66 runs thus:--

When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy raiyat, at the end of the agricultural year the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears of rent, institute a suit to eject the tenant.

6. In other words, it provides for ejectment in other cases than those covered by sec. 65 for arrears. Sec. 158B has to be read along, as has been stated, with sec. 65 and it would be a correct mode of interpretation of the statute that when words are used in the statute, as in the present case, referring to the sale of a tenure or holding in execution of a decree, one has to refer to the earlier provisions in the statute which contemplates cases where a tenure or holding can be sold in execution of a decree as distinct from cases where the right, title and interest of the tenant can be sold under such a decree. The Bengal Tenancy Act, as is well known, has always given rise to difficulties about its interpretation and one has to look to the policy underlying the Act for the purpose of interpreting its numerous provisions. It has been argued on behalf of the Appellant and we consider the argument as sound that it was by sec. 65 of the Act that the landlord was given a first charge for his rent in respect of permanent tenures or holdings as mentioned in that section. The consideration of sec. 65 came up before their Lordships of the Judicial Committee of

the Privy Council in the case of Arthur Henry Forbes v. Maharaj Bahadur Singh L. R. 41 I. A 91: S. C. I. L. R. 41 Cal. 926 18 C. W. N. 747 (1914). It will be profitable to quote here what their Lordships have stated with reference to the provisions of this section. Mr. Ameer Ali, in delivering the judgment of the Judicial Committee, said this:--

The Bengal Tenancy Act, 1885, whilst it protected the permanent tenure-holder and other tenants having similar permanent interests against ejectment for arrears of rent, gave to the landlords certain rights which they either did not possess before or possessed only in a qualified from. One was the right to bring to sale the tenure or holding in execution of a decree for arrears of rent Sec. 65, which declares this liability of the defaulting tenure, also declares that "the rent shall be a first charge thereon." It is round these words that the controversy between the parties is mainly centred.

7. And again at page 100, bottom, their Lordships say this:--

Sec. 65 declares that a certain class of tenants shall not be liable to ejectment for "arrears of rent", but that their tenure or holding "shall be liable to sale in execution of a decree for the rent thereof." Sec. 66 provides that in the case of other tenants, not coming within the preview of sec. 65, the landlord "may institute a suit to eject" the defaulting tenant. The two sections taken together cover practically the remedies provided by law for the landlord to recover arrears of rent. One section is the exact corollary of the other.

8. It has been argued on behalf of the Respondent by Dr. Basak that we must give effect to the general use of the expression "tenure or holding" in sec. 65. It is difficult to accept this contention, seeing that if this view is adopted the enactment of sec. 65 becomes wholly redundant and in construing a statute the Court should lean towards the construction which would assume that the legislature made no redundant provisions. The provisions of sec. 65 are explicit. And when a tenure or holding is sold otherwise than, in execution of a decree for arrears of rent, it is sold subject to the lien of the landlord on it for any rent due at the time of sale. The landlord is thus in the position of a first mortgagee, as far as the rent is concerned. Accordingly, when the tenure or holding is sold in execution of a mortgage-decree, the purchaser takes it subject to the charge for the rent which had accrued due in respect thereof at the time of its purchase, in the sense at least that he was bound to pay it, if the landlord proceeded to execute his decree by bringing the tenure to sale. [See the observations in the case of Srimati Moharanee Dasya v. Harendra Lal Roy 1 C. W. N. 458 (1896)]. We are, therefore, unable to accept the construction contended for on behalf of the Respondents and adopted by the Subordinate Judge. Looking to the whole scheme of the Act, it is absolutely clear to us that sec. 65 has to be read with sec. 158B. Our attention has been drawn to a decision of Mr. Justice Woodroffe and Mr. Justice Richardson in the case of Ram Lal Sukul v. Bhela Gazi I. L. R. 37 Cal. 709 (1910) where no doubt there is a passage in the judgment which

would go to indicate that Chap. XIV applies to purchasers of non-occupancy holdings also. For reasons which we have given, we are doubtful about the correctness of this decision and in a subsequent case to which reference has been made, the view which we have adopted was accepted. In the case of Munsab Ali v. Arsadulla 16 C. W. N. 831 at p. 833 (1912) the learned Judges at page 833 observe thus:--

Sec. 65 of the Bengal Tenancy Act provides that where a tenant is a permanent tenure-holder, it raiyat holding at fixed rates or an occupancy raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof and the rent shall be a first charge thereon. That section therefore does not provide for a sale of land held by an under-raiyat in execution of a decree for arrears of rent thereof.

9. This decision, although it refers to an under-raiyat, really supports the view which we have taken in this case.

10. It has next been contended on behalf of the Respondents that having regard to the finding that the tenures are nontransferable and non-heritable and as the Appellant is a Plaintiff in the suit, she has got no substantive title to the properties, seeing that Krishna Gobinda, his right, title and interest if purchased, died before the institution of the present suit. It is to be noticed that the purchaser in the present appeal, namely, appeal No. 161, is not the landlord and consequently that argument is of no avail to the Respondents so far as the present appeal is concerned.

11. The result, therefore, is that this appeal must be allowed. The judgment of the Subordinate Judge with regard to the 11 items except item No. 40 is to be set aside. His decision with regard to item No. 40 will stand. Plaintiff''s title to 4 annas in these properties is declared and she will be entitled to recover joint possession of the properties in respect of which her title has been declared with Defendant No. 1, Bhabani Charan Roy, to the extent of her share. The Plaintiff is entitled to costs from Defendants Nos. 1 and 5 both in this Court and also in the Court below. Hearing-fee is assessed at five gold mohurs.

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12. In this appeal which arises out of suit No. 22, the subject-matter of the suit is only a tenure which forms item No. 26 of the ekrarnama or the compromise decree. With regard to this the difficulty with which the Plaintiff is faced is that the purchaser is Maharaja Manindra Nundy whereas the finding that the tenure is non-transferable or non-heritable has not been challenged and that the suit is instituted after the death of Krishna Gobinda. The Plaintiff has got no subsisting title to the property. The result is that this appeal fails and is dismissed with costs to Defendant No. 1, Cossimbazar Estate, only. Hearing-fee is assessed at three gold mohurs.

Patterson, J.

I agree.