Shiromani Prasad Bhakat and Another Vs Raghunandan Prasad Shaw and Others

Court: Calcutta High Court

Date of Decision: March 18, 1954

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 26F

Citation: 58 CWN 612

Hon'ble Judges: Guha Ray, J; Das, J

Bench: Division Bench

Advocate: Lala Hemanta Kumar and Sudhir Kumar Dutt, for the Appellant;Manindra Nath Ghose and Subodh Kumar Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

Das, J.
This is an appeal by Shiramoni Prasad Bhakat and his wife Sm. Jayasree Dasi, who were the applicants in proceedings u/s 26F of

the Bengal Tenancy Act. The appeal is directed against a decision of Sri Mallinath Mukherjee, learned Subordinate Judge, Birbhum, dated the 6th

of August, 1951. This case has a chequered career. On the 30th of October, 1946, a kobala was executed by one Bhola Bhakat in respect of a

share in the disputed holding in favour of Sm. Jayasree Dasi, who, it is now alleged, was a benamdar for her husband Shiramoni Prasad Bhakat.

The deed of sale recited that the property sold was bastu mokarari raiyat. On the 14th of January, 1948, respondent No. 1, Raghunandan Prasad

Shaw, purchased from the respondents 2 to 5 certain shares in the said holding, the recital being that the holding sold was an occupancy rai-yati

holding. The consideration for the same was Rs. 5,999. A notice u/s 26C of the Bengal Tenancy Act was issued with a recital that the property

transferred was an occupancy holding and was served on the appellant No. 2. On the 4th of November, 1948. the appellants filed an application

for pre-emption u/s 26P of the Bengal Tenancy Act and made the deposit required by that section. Respondent No. 1, Raghunandan Prasad

Shaw, filed a petition of objection stating that in point of fact the holding sold was not an occupancy holding but was a piece of chandina land, the

land being situate in Nalhati Bazar with pucca structures thereon. By an order, dated the 10th of May, 1949, Sri Nisakar Chowdhury, learned

Subordinate Judge, Birbhum, dismissed the application for pre-emption holding that the disputed lands did not form part of an occupancy holding

but are Chandina lands and are outside the scope of section 26F of the Bengal Tenancy Act. The learned Subordinate Judge was also of the

opinion that, the applicants for pre-emption, namely, the appellants, were not misled by the notice u/s 26C of the Bengal Tenancy Act. Against that

order the present appellants preferred an appeal to this Court being Appeal from Original Order No. 98 of 1949. The appeal wag allowed. The

learned Judges directed that the case be sent back for re-hearing. The material portion of the order of remand runs as follows :

He (the learned Subordinate Judge) will allow both parties to adduce evidence on the question of the knowledge of the applicants for preemption

regarding the nature of the land and thereafter he will decide the case in the light of the observations made above and in accordance with law.

2. After the case went back, evidence was led on behalf of the parties. Mr Mallinath Mukherjee, learned Subordinate Judge, Birbhum, who tried

the case, was of the opinion that the applicants (the appellants before us) knew that the tenancy was not an occupancy holding at the time they

received notice u/s 26C of the Bengal Tenancy Act, and that consequently opposite party No. 1, was not estopped from showing that the tenancy

was not an occupancy holding and that he succeeded in establishing that the tenancy was a Chandina one and not an occupancy holding.

3. The applicants for pre-emption have again come up to this Court in appeal.

4. It has been contended on behalf of the appellants that the learned Subordinate Judge was in error in holding that the opposite party No. 1

(respondent No. 1) was not estopped from showing that the tenancy was not an occupancy holding. Reliance was placed on the fact that the

notice of transfer u/s 26C of the Bengal Tenancy Act having recited that the holding was an occupancy holding and the appellants pre-emptors

having acted on that notice and having made the required deposit it was not open to the purchaser respondent No. 1 now to say that the recital in

the notice was not correct.

5. In the judgment delivered by this Court on the previous occasion reference was made to a Bench decision in the case of Sm. Malati Bala Deb

Gupta v. Narendra Chandra Bhattacharjee (1) (48 C.W.N. 269), and it was stated therein that that case held that the effect of an estoppel would

be nullified if the purchasers could show that the applicant actually knew that the land was not such as was liable to be preempted u/s 26F of the

Bengal Tenancy Act. in other words, that the applicant actually knew that the land was not an occupancy holding"". It is urged relying on this

passage that there is nothing to show that the applicant actually knew that the holding in dispute was not an occupancy holding. Conceding that the

above view is the real position in law, the question is whether it can be said that in the present case the appellants actually knew that the disputed

holding was not an occupancy holding. I have already referred to the fact that by the kobala under which the appellants claimed pre-emption as a

purchaser of a share in the holding of Bhola Bhakat, there is a clear recital that the holding sold was bastu mokarari raiyat. The purchase money

was paid by the appellants on that basis. In his deposition given before the court the appellant No. 1, Shiramoni Prasad Bhakat. stated that he did

not know the status of the tenancy at the time of purchasing the property. In cross-examination he further stated that he gave his approval to the

purchase without caring to know of the status of the tenancy. In a petition of objection filed by the appellants in another miscellaneous case No.

172 of 1948, the appellants stated in paragraph 2 thereof that at the time of the sale of the homestead in suit this opposite party, Bhola Bhakat, had

the same recorded mentioning it a raiyati mokarari.This statement was verified by the appellant No. 1, Shiramoni Prasad Bhakat, who is now said

to be the real purchaser, that the particulars specified in the petition of objection were true to his knowledge, in other words, that the appellant No.

1 knew that at the time of sale of the disputed holding to the appellants by Bhola Bhakat, Bhola Bhakat had the same recorded mentioning it as

raiyati mokarari, in other words, the appellant No. 1 was fully aware of the status of the disputed holding as set forth in the deed of sale by which

he purchased. The statements in the deposition of Shiramoni Prasad Bhakat in the court below to which I have made a reference cannot, therefore,

be relied upon. That this is so is also in consonance with what a normal person would do when effecting a purchase. Shiramoni Prasad Bhakat also

stated in his deposition that his uncle Bhagbat Bhakat did everything in connection with the said sale and that Bhagbat died in Baisakh, 1354 B.S.

Having regard to the discrepant statements made by him in his present deposition and in the petition of objection to which I have made a reference,

it is difficult to rely on these statements. Sailaja Kanta Ghosh Hazra, witness No. 2 for the plaintiff petitioner, also deposed that Bhagbat Bhakat

saw to the completion of the kobala on behalf of Siromani Babu who was not present at the time of the execution of the kobala. It is difficult for us

to place any reliance on his deposition. According to him the kobala was executed by the vendor Bhola Bhakat at the vendor"s own house, but the

attestation of the attesting witnesses was secured either at their own residence or at the gadi, and that none of the attesting witnesses saw Bhagbat

Bhakat sign the document. In other words, the deposition nullifies the attestation of the kobala by the attesting witnesses. In our opinion the

appellants, when they took the kobala from Bhola Bhakat, were aware of the recital of the kobala that the disputed holding was a bastu mokarari

raiyat. It is also reasonable to conclude that a purchaser who effects a purchase on the footing that the property sold is a holding of a particular

description relies on that statement. It was not suggested by the appellant No. 1 that there was a false recital in the kobala which was inserted

therein with a purpose. The appellant No. 1 did not state in his deposition that in spite of the recital in the kobala he believed the statement in the

notice to be more correct than that given in the deed of purchase. It cannot therefore be held that the appellants were led into making the deposit

on the faith of the statement in the notice u/s 26C of the Bengal Tenancy Act. The plea of estoppel which is sought to be raised by the appellants

has not, therefore, been made out. As I have already pointed out, we have proceeded on the footing that a plea of estoppel arises if the pre-

emptor makes a deposit on receipt of a notice u/s 26-C of the Bengal Tenancy Act merely reciting that the property transferred is an occupancy

holding. As we read the cases which have been cited to us the position is not as wide as is stated above. In order to found an estoppel against a

person it must be proved that a representation was made by the person sought to be estopped and that the person seeking to raise the plea acted

on the faith of the representation and did so to his prejudice. In other words, in order that a transferee may I e bound by a plea of estoppel it must

be shown that the notice u/s 26C of the Bengal Tenancy Act contained a representation by the transferee and invited the pre-emptor to act upon

the notice and that the pre-emptor made the deposit to his prejudice on the faith of that representation. Neither section 26C nor rule 25 of the rules

framed under the Bengal Tenancy Act require that it is the transferee who has to file the notice. Section 26F confers a privilege on the co-sharer

tenants. The cases which have clustered round this point. do not lay down the proposition in the wide terms which have been stated before us. In

the case of Surendra Narayan Laik v. Notan Behary Mondial (2) (35 C.W.N. 114) which was a case under the old section 26F of the Bengal

Tenancy Act when the landlord had a right of pre-emption, the finding was that the proceeding for preemption was initiated by the opposite party

resisting preemption on the allegation that the holding transferred was an occupancy holding and that the landlord"s transfer fee was also deposited

on the footing that the holding transferred was an occupancy holding. The learned Judges observed that without laying down any general rule of

law in the matter it seemed to them that the rule should be made absolute on the ground that the opposite party was precluded from raising the

question of the nature of the tenancy at that stage. In the case of Mohini Mohan Mitra v. Radha Sundari Dasi (3) (39 C.W.N. 1014), which was

also a decision which turned upon the old section 26F of the Bengal Tenancy Act the transferee was held to be estopped from pleading or proving

in proceedings u/s 26F that the property sold was not an occupancy holding when there is nothing to show that the landlord applying for pre-

emption knew that the tenancy was not an occupancy holding. In the body of the judgment Mitter, J., observed at page 1017 that in the case

before his Lordship representation of a fact was made by the transferee that the tenancy was an occupancy holding and the petitioners acted on the

faith of that representation by making the application for pre-emption and that it was not pleaded nor was there any proof or a finding that the said

applicants knew that the tenancy was not an occupancy holding and that there was no statutory provision which would be defeated by allowing the

estoppel to operate. In other words, the learned Judge proceeded on the footing that it was the transferee who made the. representation that the

tenancy sold was an occupancy holding and it was acted upon by the purchaser. In the case of Malati Bala Deb Gupta v. Narendra Chandra

Bhattacharjee (1) (48 C. W N. 269), the learned Judges proceeded on the footing that where a purchaser purchases a property which is

specifically described as an occupancy holding and gives notice to the cosharer tenants u/s 26C and on the faith of the representation contained in

the notice, the co-sharer tenants apply for pre-emption u/s 26F. and deposit the money which is required to be deposited under that section, a plea

of estoppel may be legitimately taken (page 271). In other words, the decision proceeded on the footing that the purchaser described the holding

as an occupancy holding ip the notice u/s 26C. In the later case of Sankaracharya Mullick v. Sk. Sademani (4) (49 C.W. N. 580) it was also

assumed that the purchaser gave notice to the co-sharer tenants u/s 26C with a statement that the holding sold was an occupancy holding. After

discussing the cases bearing on the point the learned Judge observed that if the plea of estoppel is taken against the purchaser, it is certainly open

to him to meet it on any ground upon which such plea could be defeated in law. In other words, he was entitled to show that the party pleading an

estoppel had knowledge of the real state of affairs and hence could not have been misled by any misrepresentation made by the purchaser. He

could also show that the plea of estoppel could not be given effect to as to defeat the provision of statutory enactment. In other words, it must be

shown that the pre-emptors acted on the representation made by the purchaser and made a deposit on such representation. In this case, as I have

already said, the evidence does not show that the notice u/s 26C of the Bengal Tenancy Act misled the appellants into making a deposit. The

learned Subordinate Judge was, therefore, right in holding that respondent No. 1, Raghunandan Prasad Shaw, was not estopped from showing

that the tenancy was not an occupancy holding.

6. The learned Subordinate Judge has found that the tenancy is a Chandina one and not an occupancy holding. The record-of-rights records the

tenancy as dokhalkar chandina chirsthayee. The nature of the land is said to be dokan dalan. The record-of-rights raised a presumption of

correctness. The record, as it stands, clearly implies) that the tenancy is not an occupancy holding. In the course of cross-examination the appellant

No. 1, Shiroma-ni Prasad Bhakat, stated that a share of the disputed house had been mortgaged to him before his purchase, but that he did not

know what was written in the mortgage bond as to the status of the tenancy. If this bond had been produced, it would have thrown some light on

the question as to the nature of the disputed tenancy. It is quite true that the appellants have purchased the disputed property as a bastu mokarari

raiyat. To that document the respondent No. 1 is no party. Respondent No. 1 has taken the transfer on the allegation that the disputed holding is

an occupancy holding;, but the recital as to status. is that of the vendor.

7. Having regard to all the facts referred to above, we are of opinion that the presumption raised by the record-of-rights has not been rebutted.

The finding reached by the lower appellate Court that the disputed land is not an occupancy holding must, therefore, be affirmed.

8. In the result this appeal fails and it is dismissed with costs. It appears from the order of remand that costs of the previous appeal (Appeal from

Original Order No. 98 of 1940) were directed to abide the result. Those costs will be costs in this appeal, as the same has not been incorporated

in the order of the Court below, vide Order No. 23, dated 7. 8. 1951.

Guha Ray, J.

I agree.