

(2001) 05 CAL CK 0042

Calcutta High Court

Case No: Appeal from Appellate Decree No. 528 of 1978

Haradhan Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: May 11, 2001

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 57B, 6

Citation: 105 CWN 892

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Asish Chandra Bagchi and Tapan Kumar Chakraborty, for the Appellant; Amal Kumar Das and Wasef Ali Mondal, for the Respondent

Final Decision: Allowed

Judgement

Subhro Kamal Mukherjee, J.

The plaintiff is the appellant in this second appeal. The Title Suit No. 107 of 1973 was instituted by the plaintiff in the court of the learned Sadar Munsif at Suri, Distirict Birbhum, for declaration of right, title and interest of the plaintiff to the suit lands and for. permanent injunction. The plaintiff contended that the suit lands appertaining to C. S. Khaitan Nos. 155, 145, 487 and 139 of Mouza Chandrapur described in lot numbers 1, 2, 3 and 4 respectively of the schedules to the plaint originally belonged to Khagendra Nath Banerjee and his two brothers, who conveyed the same to Dharanidhar Mondal in Magh 1361 B. S. Dharanidhar Mondal in his turn conveyed! the said lands to the mother of the present plaintiff on September 19, 1955 corresponding to 2nd Aswin, 1362 B.S. On the death of the mother off the plaintiff, the plaintiff acquired the property by intientence and began to possess the same. As in the revisional settlement operation) the rights of the said lands have not been correctly recorded tite present suit has been instituted.

2. The suit was contested by the defendant No.1/state of West Bengal by filing a written statement. In the written statement the State did not dispute the title of the plaintiff in respect of the lands included in lot numbers 2, 3 and 4, but with regard to the lands described in lot number 1, it was contended that the said land was not retained by the predecessor-in-interest of the plaintiff and due to such act of non-retention the properties stood vested in the State.

3. At the trial the defendant No. 1/ State of West Bengal did not resist the claim of the plaintiff in respect of the lands described to lot members 2, 3 and 4 and the learned Munsif did not find any difficulty in declaring the title of the plaintiff in respect of those lands. The learned Munsif in the judgment recorded that from R. S. Record of rights it appears that Khagendra Nath Banerjee and his two brothers were ijaradars in respect of one anna interest and held that raiyati interest was alienated by Khagendra Nath Banerjee and his two brothers in favour of Dhananidhar Mondal, who, in his turn, transferred the same to the mother of the plaintiff and, as such, on the death of the mother of the plaintiff, the plaintiff acquired a valid title in the suit land.

4. The State preferred Title Appeal No. 162 of 1974 in the Court of the learned District Judge at Suri, District Birbhum which was eventually transferred to the Court of the learned Subordinate Judge at Suri, Birbhum. The learned Judge in the Lower Appellate Court held that the suit was maintainable and was not hit by the provisions of Section 57B of the West Bengal Estates Acquisition Act, 1953. The learned Judge in the Lower Appellate Court recorded that the properties described in Item No. 1 were recorded in Khatian No. 155 and those were intermediary lands recorded in the names of Khagendra Nath Banerjee, Nagendra Nath Banerjee and Jatindra Nath Banerjee and their status was recorded u/s 22(2) of the Bengal Tenancy Act, 1885. The learned Judge in the Lower Appellate Court held that it appears from the R. S. Record of rights that the said property has been recorded in column 23 in the names of Khagendra Nath Banerjee and his two brothers and their status was recorded u/s 22(2) of the Bengal Tenancy Act. It was held that the onus is upon the plaintiff to prove that the Banerjees were Ijaradars, but the plaintiff had failed to prove the same. The learned Judge in the Lower Appellate Court allowed the appeal and dismissed the suit holding that the approach of the learned Munsif was not correct and being aggrieved the plaintiff has come up with this second appeal.

5. Although no substantial question of law was formulated at the time of admission hearing of the appeal under Order 41, Rule 11 of the Civil Procedure Code, Mr. Asish Chandra Bagchi, learned Advocate appearing for the appellant, formulated the following substantial question of law for consideration : In view of the recording of the status of the Banerjees u/s 22(2) of the Bengal Tenancy Act whether it was incumbent on them to retain the land by submitting return under the West Bengal Estates Acquisition Act, 1953 and the West Bengal Estates Acquisition Rules, 1954.

6. Section 22 of the Bengal Tenancy Act, 1885 runs as under : "22(1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession, or any other way whatsoever, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or a permanent tenure holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy raiyat or share or portion thereof, together with the occupancy rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder : Provided that a co-sharer landlord who purchases a holding of a raiyat at a sale in execution of a rent-decree or of a certificate under this Act shall not hold the land comprised in such holding as a raiyat but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the raiyat to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

(3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a raiyat any land comprised in his temporary tenure or farm. Explanation - A person having a right to hold the lands of an occupancy holding as a raiyat does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

7. By the amendment of 1928, the old rigid rule debarring the co-sharer landlord from acquiring occupancy right altogether was relaxed to certain extent. The old disability was confined to the case of a purchase made at a sale in execution of a rent-decree or of a certificate under the Bengal Tenancy Act and did not extend to the acquisition of occupancy right by private transfer of succession or in some other way than by an execution sale or certificate sale. The effect of the amending Act has been correctly laid down by A.C. Ghose in his commentary on the Bengal Tenancy Act, 1885 as under: "(1) If the entire interest of the proprietor or permanent tenure-holder and the entire interest of the raiyat unite in the same person, no matter in whichever way it does so, complete merger results sub-section (1); (2) If this element of entirety is wanting and the union results otherwise than from purchase in rent- sale of certificate-sale, there is no merger, normal state of things continues and the occupancy right remains intact/sub-section (2)/(3). If the element of entirety be absent but the union results from purchase in rent sale or certificate-sale, a quasi-merger takes place; we say quasi, because the raiyati goes, but the right to hold the land continues, of course, subject to payment of a sum (as

distinguished from rent) for use and occupation to the other co-sharer landlords/Proviso to sub-section (2)/; (4) If the raiyati interest is acquired by a temporary (as distinguished from permanent) tenure-holder or farmer of rents (i.e. an Ijaradar), complete merger takes place, which lasts only during the continuance of the temporary-tenure or the farm/sub-section (3); notice the expression "while so holding"; (5) There is no merger if the raiyat becomes the temporary tenure-holder or farmer. See Expl. To sub-section (3)". From the aforesaid discussions it is clear that Khagendra Nath Banerjee and his two brothers were not intermediaries and, as such, under no obligation to submit return-to retain the land. u/s 6 of the West Bengal Estates Acquisition Act, 1953 it was the obligation of the intermediaries to exercise their right to retain certain lands and, as such, the learned Judge in the lower appellate Court proceeded erroneously on the basis that in view of non-retention of the land in respect of lot No. 1, the same stood vested in the State. The vendors of the vendor of the plaintiff were not intermediaries, but they were the raiyat and, as such, the devolution of interest on the plaintiffs mother was a valid one and the plaintiff has, also, acquired interest in respect of the lands described in lot No. 1.

Accordingly, the appeal is allowed. The judgement and decree passed by the learned Judge in the lower appellate Court is set aside and that passed by the learned trial Judge is restored. There will be no order as to costs.