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Raja Ranjit Singh Bahadur Vs Moharaj Bahadur Singh and Others

None

Court: Calcutta High Court

Date of Decision: Nov. 30, 1910

Acts Referred:
Bengal Patni Taluks Regulation, 1819 â€" Section 5

Citation: 9 Ind. Cas. 47

Hon'ble Judges: Mookerjee, J; Coxe, J

Bench: Division Bench

Judgement

1. This is an appeal in an action for recovery of money claimed by the plaintiff-appellant under a putni lease. It appears that on the 2nd March

1855, Rani Phul Kumari, the predecessor-in-interest of the plaintiff, granted to one Krishna Chander Banerjee, now represented by the

defendants, a patni lease of a considerable tract of land at a consolidated rent of Rs. 12,350. At the foot of the qabuliat executed by the lessee the

following statement occurs: ""I shall manage for the daily cooking of the bhog of the above-mentioned Thakur with dry wood and wild trees of the

said mahals in the same manner as they are being done from before; should any laches on my part in this respect be found by you, I shall pay from

my own pocket the costs that will be incurred for wood etc., for the cooking of the bhog."" The defendants have failed to supply wood in the terms

of this agreement, and the plaintiff now sues them for the price of the articles supplied by himself for the worship of the idol. The defendants

resisted the claim substantially on the ground that the sum claimed is in the nature of an abwab and not legally recoverable. The plaintiff does not

contest the position that, if the putni lease is taken by itself, the sum in question is in the nature of an abwab, because obviously the value of the

wood agreed to be supplied has not been incorporated with and does not form an integral component of the rent for which the putni was granted.

Consequently, upon the authority of the decision of this Court in the cases of Narendra Kumar Ghose v. Gora Chand Poddar 3 C.L.J. 391 : 33 C.

683; Aparna Charan Ghose v. Kasam Ali 4 C.L.J. 527 : 10 C.W.N. 527 and Gaymtullah v. Girish Chandra 12 C.W.N. 175 the money in

question is an abwab and not legally recoverable. The case of Krishna Chandra v. Susila Soonduri Dassi 3 C.W.N. 608 : 26 C. 611 is

distinguishable, as there is nothing to show that the lease in that case was executed before the Bengal Tenancy Act came into force. It has been

contended, however, on behalf of the plaintiff that the position of the parties had been altered by reason of a subsequent agreement between them,

made on the 12th March 1903. It appears that the present defendants, who are the representatives in interest of the original putnidar, applied for

registration of their names in the books of the landlord. u/s 5 of Regulation VIII of 1819, they were called upon to pay the necessary fees and to

execute a security bond. They complied with this requisition, and in the security-bond they agreed to remain bound by all the terms of the original

qabuliat. The learned Vakil for the plaintiff has argued that as this security bond was executed after the Bengal Tenancy Act had come into force,

the provisions of Section 179 have become applicable to the initial contract which is the foundation of the tenancy. In our opinion, there is no force

in this contention. Section 179 provides that nothing in the Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a

permanently settled area from granting a permanent, mokurari lease on any terms agreed on between him and his tenant. The suggestion is that the

execution of the security bond u/s 5 of the Putni Regulation amounted substantially to the grant of a new lease. This position is obviously untenable.

The security bond is executed by the purchasers on the assumption that they have acquired a valid interest by reason of their purchase that is,

because they have succeeded to the interest of the"" transferor. The position, that the transferee of a putni taluk, when he is recognised by the

zemindar, becomes a new putnidar cannot be supported upon any intelligent principle. Section 5, which makes it obligatory upon the zemindar to

register the name of the transferee, if certain conditions are fulfilled, is inconsistent with the theory that the execution of the security bond by the

transferee and its acceptance by the zemindar is equivalent to the grant of a new putni lease. In this view, Section 179 is of no assistance to the

appellant as the contract of 1855, unaffected by the transaction of 1903, does not fall within the sphere of its operation. The result is that the

decree of the District Judge is affirmed, and this appeal dismissed with costs.