Bhutnath Naskar and Another Vs Monmotho Nath Mitra

Court: Calcutta High Court

Date of Decision: June 22, 1909

Judgement

Lawrence Jenkins, C.J.
I agree that these appeals should be dismissed, and I do so on the ground that the interest of the defendant was a

tenure, and, therefore, not a protected interest "" within the meaning of Section 160 of the Bengal Tenancy Act. This is in accord with the

interpretation placed on a lease, not fairly distinguishable from the pre- sent, by Mr. Justice Mitra whose decision was affirmed on appeal under the

Letters Patent. The District Judge refers to this decision of Mr. Justice Mitra but was evidently misled by the omission of a not" before the words

raiyats holding""--an omission shown by a perusal of Mr. Justice Mitra"s judgment to be obviously attributable to a clerical error. In this view, I

think it unnecessary for me to discuss the further question that has been dealt with by my learned colleague.

2. Both the appeals are dismissed with costs.

Mookerjee, J.

3. This is an appeal on behalf of the defendants in an action for ejectment commenced by a, purchaser at a sale for arrears of rent, after service of

notice u/s 167 of the Bengal Tenancy Act. The Court of first instance decreed the suit in the view that the interest of the defendants was liable to be

and had been annulled under that section. The District Judge on appeal held that the defendants were not tenure-holders but raiyats and were

consequently protected from ejectment u/s 160 of the Bengal Tenancy Act. On appeal to this Court Mr. Justice Doss reversed the decision of the

District Judge. He held in the first place that upon a true construction of the lease of the 8th November 18S1 the defendants were tenure-holders

and wore consequently liable to have their interest annulled u/s 167 of the Bengal Tenancy Act. He held in the second place that even if the

defendants were taken to be raiyats, they were raiyats holding at a fixed rate of rent whose interests were not protected by Section 160. On

appeal under the Letters Patent it has been argued that the defendants were not tenure-holders, and that if under the lease of 1881 they were

treated as raiyats holding at a fixed rate of rent, as they had been in occupation of the holding for more than twelve years, they had acquired a right

of occupancy which was entitled to protection u/s 160. As regards the first of these contentions, it is sufficient to say that the terms of lease upon

which reliance is placed make it reasonably plain that the position of the defendants was that of tenure-holders and not that of raiyats. As is pointed

out by Mr. Justice Doss, the rights conferred upon the defendants under the lease are very much more extensive than those ordinarily possessed by

any raiyats; and I need not refer in detail to the terms of the lease, as I agree with the learned Judge in the construction placed by him on that

document, as also with Mr. Justice Mitter in the view taken by him in the unreported case where a lease substantially identical in terms came under

consideration (S. A. No. 2862 of 1902 affirmed in L. P. No. 10 of 1905 by Maclean, C.J. and Pratt, J.).

4. As regards the second contention of the appellants that if they are raiyats at a fixed rate of rent they have also acquired a right of occupancy. I

am unable to hold that the argument is well-founded. The Bengal Tenancy Act appears to have drawn a clear and well-marked distinction between

the different classes of raiyats. Section 4 first classifies tenants into tenure-holders, raiyats and under-raiyats. Raiyats are classified into raiyats

holding at fixed rates, occupancy raiyats and non-occupancy raiyats. The incidents of tenure-holders are dealt with in Chapter III of the Act; the

incidents of holding of raiyats who hold at fixed rates of rent are described in Chapter IV; the position of occupancy raiyats is considered in detail

in Chapter V, while the rights of non-occupancy raiyats are considered in Chapter VI; lastly, Chapter VII is devoted to under-raiyats. The learned

vakil for the appellants contends that the terms of Section 2"") of the Bengal Tenancy Act are comprehensive enough to cover a case of raiyats

holding at fixed rates. His argument in substance is that a raiyats holding at a fixed rate after he has occupied the holding for twelve years becomes

a settled raiyat of the village and thus acquires a right of occupancy. This contention involves the position that the rights and liabilities of such a

tenant after twelve years are to be determined with reference to the provisions of Chapter V of the Bengal Tenancy Act. When, however, we

proceed to examine that Chapter, it becomes at once obvious that there are provisions which could never have been intended to apply to raiyats

holding at fixed rates. For instance, while Section 18 Clause (b) renders a raiyat at fixed rates liable to be ejected by his landlord only on the

ground that he has broken a condition consistent with the Act on breach of which he is under the terms of a contract between him and his landlord

liable to be ejected, section. 25 renders an occupancy raiyat liable to be ejected on the same ground as also on the additional ground that he has

used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy. If, therefore, the argument of the

appellants prevails, the result follows that a raiyat holding at a fixed rate, before the lapse of twelve years, is liable to be ejected only on the limited

ground stated in Section 18, whereas after the lapse of twelve years he is liable to be ejected on the additional ground mentioned in Section 25.

Again, if we look to Section 39 of the Act, it is clear that the money-rent payable by an occupancy raiyat may be enhanced by suit, on the other

hand, the very essence of the right of a raiyat holding at a fixed rates is that his rent is not liable to be enhanced. If, therefore, the contention of the

appellant is well-founded, we must hold that within a period of twelve years from the creation of the tenancy a raiyat holding at a fixed rate of rent

is not liable to have his rent enhanced, whereas after the lapse of twelve years, when, according to the contention of appellants, ho has in addition

acquired a right of occupancy, his rent is liable to be enhanced u/s 30. It is not necessary to examine in detail the other provisions of Chapter V but

it may be pointed out that the anomalous position described, may arise even before the lapse of twelve years, in cases where Section 20, Sub-

section (5) or Section 21, Sub-section (1) is applicable. What I have said already, seems to make it fairly clear that the Act observes a well

defined distinction between a raiyat holding at a fixed rate of rent and an occupancy-raiyat. If we now turn to Section 160, we find that reference is

made expressly to a right of occupancy and the right of a non-occupancy raiyat, but no mention is made of the right of a raiyat at a fixed rate of

rent. The inference, therefore, seems to be reasonable that the intention of the Legislature in Section 160 was to protect from ejectment a raiyat

who possesses a right of occupancy as also a raiyat who possesses the right of a non-occupancy raiyat as mentioned in Clause (c) of that section,

and not to protect from ejectment a raiyat holding at a fixed rate of rent. The reason for the distinction, if it is permissible for us to inquire into the

reason for plain provisions of the law, is not difficult to find. The policy of the legislature was to protect the raiyat, but not necessarily to the

complete detriment of the purchaser of a tenure at a sale for arrears of rent. If a raiyat holding at a fixed rate of rent were protected from

ejectment, the purchaser would acquire the property in an encumbered condition; for he would be unable, not only to eject the raiyat but also to

enhance his rent. On the other hand, if occupancy raiyats and non-occupancy raiyats alone were protected from ejectment, while their possession

would be maintained, they would be liable to have their rent enhanced from time to time, at the instance and for the benefit of the purchaser of the

tenure. Upon a consideration then of the provisions of the Bengal Tenancy Act, the inference seems to be fairly clear that the appellants cannot

successfully contend that their interest in the tenancy is a protected interest within the meaning of Section 160. In my opinion, the view taken by

Mr. Justice Doss upon both the points, is correct, and his decree should be affirmed with costs.