(1870) 03 CAL CK 0020

Calcutta High Court

Case No: Special Appeal No. 1527 of 1869

Bunwari Lal Roy		APPELLANT
	Vs	
Mahima Chandra Knuall and Others		RESPONDENT

Date of Decision: March 8, 1870

Judgement

Norman, Officiating C.J.

1. This is a suit for certain property to which the plaintiff alleges be is entitled as having descended to him from Gaur Sundar, by whose widow be was adopted. The plaintiff alleges that the property remained in the possession of his adoptive mother Brajeswari, till the year 1273 (1866), with his permission, and that at the end of 1273 (1866) he went to take possession, but the defendant would not allow him to do so. He therefore sues, praying that khas possession may be given to him, and that an alleged patni patta may be declared to be invalid. He also asks for wasilat. The facts of the case are shortly these. Gaur Sundar died in 1240 (1833) leaving a widow Brajeswari and his mother Hemlatta Chowdhrain. Brajeswari in 1252 (1845) adopted the plaintiff, who obtained his majority in 1262, or in other words, in 1855. The present suit was brought in 1867, 12 years, or nearly 12 years, after plaintiff obtained his majority. The first point made in favour of the defendant is that the suit is barred by limitation.

2. Now, though the patni patta purports to have been granted by Hemlatta Chowdhrain, the mother of Gaur Sundar, who, from the findings of the lower Courts, seems to have had no interest in the property, the rent was for many years paid by the defendant to Brajeswari, and in the years 1257, 1258, 1259, and 1260 (1850, 1851, 1852, and 1853) Brajeswari appears to have realized the rent from the defendant, after the institution of proceedings under Regulation VIII of 1819. From the year 1262 (1855) when the plaintiff obtained his majority to the present time, the rent has been realized by proceedings under Act X of 1859; and the substantial question before us has been whether under those circumstances we can infer that Brajeswari, or the plaintiff, Bunwari Lal Roy, confirmed the patni patta granted by Hemlatta Chowdhrain, or whether the right of the

plaintiff to sue to declare the patni invalid is now barred by limitation.

3. After much consideration of the subject, we have come to the conclusion that the suit to declare the patni patta invalid is not barred.

4. The patni patta, or supposed patni patta, (for I may observe that no evidence has been given by the defendant as to its having been really executed by Hemlatta Chowdhrain) is one granted by a person who had no title to the estate, and under whom the plaintiff does not in any way claim. The defendant has a lease by a person, not only who had no right to grant it, but who had no interest in the property, and was a stranger to it. Brajeswari, the person to whom the land belonged, received the rents year by year. It is true that, particularly after the adoption of the son, she gave receipts which treat the rent as the rent of property held in patni and that she took proceedings as if there was a valid and subsisting patni under which she was entitled to receive the rent. It appears to us, however, that these receipts, and these proceedings are merely evidence of the existence of a patni; but when the facts are examined, and it turns out that there is no patni at all, that in fact the relation of zamindar and patnidar does not exist, it comes to no more than this, that there is evidence, which, if uncontradicted, might have led to the inference that the relation of zamindar and patnidar existed between the parties, but when the facts are ascertained we find that such is not the case. There is nothing to show that the defendant was induced in any way to alter his position or in any way prejudiced by acting upon any belief founded on the incorrect statements of Brajeswari, as expressed in some of the receipts for rent. There is no reason, therefore, why as against Brajeswari or the now plaintiff we should presume the existence of that which had no existence, viz., a valid patni lease. What, then, was the position of the defendant and Banwari Lal Roy, when represented by Brajeswari during his minority? It was simply this. The defendant was a person paying rent to Brajeswari, the relation of landlord and tenant existed between them, and none other. On Bunwari Lal Roy coming of age, he had a right to sue and became of capacity to sue to obtain a declaration, that the patni patta was invalid, but the patni patta acquired no validity, because he did not sue to set it aside. The relation of the parties continued exactly the same as it was during the plaintiff''s minority. The defendant was a person paying rent, and Bunwari Lal Roy was a person receiving it. There was nothing which could be, or was confirmed by any act or commission of Bunwari. The patni patta which was invalid at the beginning remained invalid down to the commencement of the suit, and it appears to us that in respect of so much of the prayer of the plaint, as prays that the patni patta may be declared to be invalid, we may make a declaration that the patni having been granted by a person who had no interest in the estate is invalid, and in no way binding upon the plaintiff Bunwari Lal Roy.

5. The next question is, whether the plaintiff is entitled to obtain a decree for the actual possession of the property and mesne profits. As I have said, the legal relation of the parties was that of landlord and tenant, and if a tenant is legally in possession paying rent, whether be is in possession as a ryot or as the holder of an intermediate tenure, we think that that right of possession, which exists as long as the relationship of landlord and

tenant continues, must be legally determined before it is competent to the landlord to bring a suit for possession. If a landlord sues for possession, he is bound to prove that he was entitled to actual possession before the time of the institution of the suit.

6. Baboo Srinath Das admits that there are many decisions in which a rule of this kind has been laid down as regards ryots. It is easy to show that that principle applies also to the cases of intermediate tenures. In the case of a ryot, if the landlord could maintain a suit for possession in the middle of a year, and suddenly determine a tenancy without notice, he might sweep off the fruits of the ryot''s labour and expenses for the whole year. So, again, in the case of an intermediate tenure, if the landlord could come upon the land or suddenly turn out the tenant, he might do so immediately before the period for collecting the kists of rent which such tenant was collecting from his ryots, and thus deprive the tenant of the profits to which he was looking to reimburse himself for the expenses to which he had been put in paying his own rent, kist by kist, throughout the year. He could turn out his servants without notice, and remove his books out of his cutcherry without giving him time to deposit them in a place of proper custody, and so cause him the greatest inconvenience. The tenant might have made advances for the improvement of the estate: by determining his tenancy without notice, the landlord might deprive him of the power to recoup himself for such advances. We think that the principle which applies to the case of ryots applies also to the case of middlemen:--and that the latter cannot be turned out by the zamindar without a reasonable notice, notice which we are disposed to think should expire at the end of the year. This suit was brought without notice, and therefore the plaintiff, in so far as he asks for possession and wasilat, is not entitled to a decree. As the plaintiff does not succeed upon this point, which is an essential part of this case, and as from the peculiar character of the dealings between himself and his mother, ryots who had held under what they may have supposed to be valid leases, must have been put to considerable difficulties in knowing what their rights were, we think that the plaintiff should not get his costs of this suit. Each party will bear his own costs in all the Courts.