

(1923) 07 CAL CK 0050
In the Calcutta High Court

Baikanta Nath Ghose

APPELLANT

Vs

Bhuban Chandra Mahapatra and Others

RESPONDENT

Date of Decision : 18-07-1923

Acts Referred:

Citation : AIR 1928 Cal 273

Hon'ble Judges : Sanderson, C.J;Richardson, J

Bench : Full Bench

Judgement

Sanderson, C.J.—This is an appeal by the plaintiff against the judgment of the learned Additional District Judge of Midnapur.

2. The point which arises on this appeal may be stated in the words of the learned District Judge at the beginning of his judgment, whether the landlord's claim for khas possession of the lands of a non-transferable occupancy holding is debarred by his having recognized a private purchase and he is estopped from suing for khas possession.

3. The learned vakil for the appellant has drawn our attention to several cases in which the Court had to deal with a dakhila granted to a transferee of a non-transferable occupancy holding as marfatdar of the original tenant : and, the learned vakil contended that the principle of those cases should be applied to this case and the appeal should be allowed.

4. In my judgment the principle which should be applied to such a case as this was laid down by Sir Lawrence Jenkins when he was the Chief Justice of this Court, in the case of Prabhahati Dassi v. Taibatunnessa Choudhurani [1913] 17 C.W.N. 1083 and, the passage to which I refer is at p. 1091 as follows:

But it is said, on the other side, that those receipts do not amount to a recognition because they are marfatdari receipts and, therefore, have no such legal effect as defendant 1 claims. I am inclined to think that Courts have yielded too freely to the temptation of being blinded to realities by the words "marfatdar" and "gujratdar" and so the true facts have suffered. At the same

time I am bound to admit that there are expressions in the oases which would suggest that where these words appear no recognition can be inferred. I think, however, each case must be determined on its own circumstances, and the Court should determine in each case whether, on a consideration of all the facts - not merely by giving undue weight to words used - a legal inference is or is not to be drawn that there has been a recognition establishing a relationship of landlord and tenant between one who has paid and another who has received rent for a number of years.

5. That statement, it is quite true, as the learned vakil pointed out, was not necessary for the decision of that case, but the principle was adopted by my learned brother Mr. Justice Chatterjee in the case of *Monmoth Nath Mitter v. Anath Bundhu Pal* [1918] 23 C.W.N. 201, the passage being at p. 214. In my judgment that is now accepted, at all events so far as this Court is concerned, as the proper principle which ought to be applied to such a case as this. I, therefore, have to consider whether there were in this case such facts as would justify the learned Additional District Judge in arriving at the conclusion that the plaintiff had recognized the father of the first four defendants, whose name was Sadananda, Mahapatra, as the tenant.

6. The suit was brought on the 18th September 1918, and it appeared that the original tenant of the non-transferable occupancy holding was Guru Prosad, and he had purported to sell his holding to his father in December 1910. One of the allegations in the plaint was that Guru Prosad had abandoned the land without making any arrangement for the payment of the rent of the same and both the learned vakils agreed that the allegation as to the abandonment was based upon the sale which was alleged to have been made in December 1910. Therefore, we must approach this case upon the allegation of the plaintiff that the original tenant Guru Prosad had abandoned the land so long ago as 1910. A suit was brought for rent, and a decree was obtained and a sale was about to take place when the amount necessary to meet the decree was deposited by the purchaser, that is to say, Sadananda Mahapatra, the predecessor of defendants 1 to 4.

7. The learned Munsif, when he allowed the purchaser to deposit the decretal dues, added a note that the order would not affect the rights of any party. In February 1915, the plaintiff, alleging that the money which was lying in the Court belonged to him, made an application that it should be paid to him : he took the money out of Court without making any protest against the order of the Munsif allowing the deposit to be made by the alleged purchaser. In July 1917 a rent receipt was granted by the plaintiff and that is described in the learned Judge's judgment as follows:

He accepted rents from the private purchase and granted a dakhila in the name of the late tenant bat describing the purchaser as marfatdar.

8. As I have said, this suit was brought in 1918. In this case, it is true that the dakhila described the person, who paid the rent, as an agent of the original

tenant, but as I read the learned Judge's judgment it amounts to this, that that description of the purchaser was not a correct description. I find it difficult to understand how the purchaser could be properly described as agent of the original tenant in 1917, when it is remembered that the original tenant, as alleged by the landlord, had abandoned the land so long ago as 1910.

9. It is not necessary for me to say more than that, in my judgment, applying the principle which was laid down by Sir Lawrence Jenkins in the case to which I have referred, there was sufficient material before the learned Additional District Judge to justify him in concluding that the plaintiff had recognized the purchaser.

10. Consequently, in my judgment, this appeal should be dismissed with costs.

Richardson, J.

11. I agree.