
(1916) 06 CAL CK 0060
In the Calcutta High Court

Bamandas Bhattacharyya and Others

APPELLANT

Vs

Nilmadhab Saha and Others

RESPONDENT

Date of Decision : 21-06-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 85, 85(1), 85(2)

Citation : 35 Ind. Cas. 754

Hon'ble Judges : Cuming, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for recovery of arrears of rent under a lease, and of damages for breach of a covenant contained therein. On the 27th August 1896, the plaintiffs granted the lease to the defendants-in respect of an area of 942 bighas, the interest of the grantors was described as that of tenure-holders and the grantees who paid a premium of Rs. 1,280 were made under-tenure-holders by the instrument. The rent was fixed in perpetuity at Rs. 688 4-0, the tenants undertook to pay Rs. 538-4 0 direct to the superior landlord of their grantors and the balance, Rs. 150, to the lessors themselves. The lease contained a covenant that if by reason of non-payment of the rent due to the superior landlords, year after year, instalment by instalment, a suit is brought against the lessors and if in execution of the rent-decree the tenure or other property of the lessors is attached and sold" in auction, the lessees will be bound to pay the rent due with interest, costs and damages #and the proper value of such properties of the lessors as may be sold. The contingency thus contemplated did not happen for many years, as the lessors, who entered into possession of the lease-hold property under this instrument, duly performed their obligations. On the 29th November 1910, however, the superior landlord instituted a suit against the present plaintiffs for recovery of rent for the two years, 1908--10; it is not disputed that this rent had fallen into arrears, because the present defendants had failed to pay to the superior landlord the rent due as they had undertaken to do in the lease. The suit was decreed on the 4th January 1911 for a sum of Rs. 2,987, execution was taken out in due course and

the tenure was sold on the 14th June 1911, when it was purchased by the present defendants for a sum of Rs. 1,600. As the rent-decree was thus satisfied only in part, the plaintiffs, on the 21st December 1911, paid to the decree-holder the balance of the judgment debt, that is, a sum of Rs. 1,264. The superior landlord, on the 10th May 1912, obtained against the plaintiffs a supplementary decree for Rs. 549 and costs and interest, on account of rent due for the period between the date of institution of the previous suit and the date of sale of the tenure. The plaintiffs satisfied this decree on the 50th June 1912. On the 7th August 1912, they instituted this suit for recovery of Rs. 6,170 composed of five items, namely, Rs. 1,280 as their share of the proceeds of the sale held on the 14th June 1911, Rs. 3,000 as the value of the property sold, Rs. 1,264 as the amount paid in satisfaction of the first decree, Rs. 626 as the amount paid to satisfy the second decree, and Rs. 300 as the arrears of rent due for two years. The defendants resisted the claim, substantially on the grounds that the plaintiffs were not tenure-holders but occupancy ryots, that the permanent lease in their favour was void and inoperative as granted in contravention of Section 85 of the Bengal Tenancy Act and that they were, consequently, not bound by any of the covenants in the lease. They further pleaded that the damages claimed were excessive. The Subordinate Judge has found the main facts in favour of the plaintiffs, but he has dismissed the suit on the ground that, as the plaintiffs were in reality occupancy ryots and not tenure-holders, the lease was void u/s 85 of the Bengal Tenancy Act. On the present appeal, the decree of the Subordinate Judge has been assailed as erroneous in law and as not really supported by the decisions mentioned by him, namely *Jarip Khan v. Durfa Bewa* 15 Ind. Cas. 476 : 16 C.L.J. 144 : 17 C.W.N. 59 and *Telam Pramanik v. Adu Shaikh* 18 Ind. Cas. 791 : 17 C.W.N. 463.

2. Section 35 of the Bengal Tenancy Act provides as follows:--"(1) If a ryot sublets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord, unless made with the landlord's consent: (2) A sub-lease by a ryot shall not be admitted to registration if it purports to create a term exceeding nine years." The third sub-section refers to sub-leases granted before the commencement of the Bengal Tenancy Act and has obviously no possible application to the present case. The question for consideration is whether the first two clauses apply and, if so, what is their effect upon the rights of the parties. It is plain that the first sub-section has no application, because the superior landlord of the plaintiffs is not a party to this litigation and neither the plaintiffs nor the defendants have argued that the lease of the 27th August 1896 is valid against him. The controversy is thus restricted to the second sub-section. With reference thereto, the defendants contend that the lease of the 27th August 1896 is in essence a sub-lease by a ryot within the meaning of Sub-section 2, that it should not have been admitted to registration, that the fact of registration contrary to law must be ignored, that the instrument is thus inadmissible in evidence u/s 49 of the Registration Act, and that there is accordingly no proof that the defendants hold as tenants under the plaintiffs on the conditions

mentioned therein. The plaintiffs put forward a two-fold answer to this argument, namely, first, that the defendants who entered into possession under the lease are barred by the doctrine of estoppel and are not competent to question the title of the lessors as tenure-holders on proof that they were in reality occupancy ryots, and secondly, that if the defendants are permitted to question the title of their lessor and to prove that the instrument which is the "root of their own title is inoperative u/s 85(2). still it is open to the plaintiffs to establish independently of the lease that the defendants were their tenants, that they entered upon the land as such and that they have been in occupation for many years by payment of rent on certain terms and subject to certain liabilities in the event of default. It is obvious that the second branch of this contention will not require examination, if the first is, as we think it must be sustained.

3. It is well settled that the creation of the complete relation of landlord and tenant has the effect in law of estopping the tenant to deny the validity of the title which he has admitted to exist in the landlord; the estoppel arises not by reason of some fact agreed or assumed to be true, but as the legal effect of carrying the contract into execution, of the tenant taking possession of the property from the hand of the lessor. The grounds of this rule were recently examined by this Court in *Bhaiganti Bewa v. Himmat Bidyakar* 35 Ind. Cas. 7 : 20 C.W.N. 1335 : 24 C.L.J. 103 (decided by Sanderson, C.J. and Mookerjee, J. on the 11th May 1916), where the following observation was made: Enjoyment by permission is the foundation of the rule that a tenant shall not be permitted to dispute the title of his landlord. Two conditions are essential to the existence of the estoppel, first, possession, secondly, permission; when these conditions are present, the estoppel arises, and the estoppel prevails so long as such possession continues." From this point of view, the defendants are not competent to deny that the plaintiffs are tenure-holders, they cannot be permitted to allege or prove that the plaintiffs were occupancy ryots at the date of the lease executed in their favour, consequently, the case does not attract the operation of Section 85(2) of the Bengal Tenancy Act, in other words, the defendants cannot show that the lease was void and that no interest passed to them. The case thus falls within the rule that where no interest passes, an estoppel arises *Trevivan v. Lawrence* 1 Salk 276 : 6 Mod. 256 : 91 E.R. 241 and not within the converse rule that where an interest passes no estoppel arises *Doe d Strode v. Seaton* (1835) 2 C.M. & R. 728 : 1 Tyr. & G. 19 : 1 Gale. 303 : 5 L.J. (N.S.) 73 : 41 R.R. 831 and *Langford v. Selmes* 3 K. & J. 220 : 3 Jur. (N.S.) 859 : 69 E.R. 1089. The justice of the view we take will be obvious from a consideration of the ease converse to what has happened here. Suppose, after the lessees had gone into possession, the lessors had sued to eject them on the plea that they were occupancy ryots and not tenure-holders and that the sub-lease was consequently void u/s 85(2). The lessees would plainly have been entitled to rely on the doctrine of estoppel to defend their position. But as was pointed out by the Judicial Committee in *Grija Kant Lahory v. Hurrish Chunder Chowdhry* 19 W.R. 114 (P.C.) and by the House of Lords in *Concha v. Concha* 11 A.C. 541 : 56 L.J.

Ch. 257 : 55 L.T. 522 : 35 W.R. 477 estoppels are, ss a general rule, mutual, or in the language of Lord Coke, every estoppel ought to be reciprocal, that is, to bind both parties and this is the reason that regularly a stranger shall neither take advantage of nor be bound by the estoppel" Co.-Litt. 352; Lilabati Misra v. Bishun Chobey 6 C.L.J. 621 . We feel no doubt whatever that the parties to this litigation are mutually bound by the terms of the lease of the 27th August 1896, and that it is no more open to the defendants than to the plaintiffs to prove facts contradictory to the allegations which formed the basis of the contract, after that contract had been carried into execution and the contracting parties had enjoyed benefits there under. In fact, the Advocate-General, with the candour which always characterises his arguments, did not seriously contest the correctness of this view.

4 The question remains, however, whether the numerous judicial decisions which interpret Section 85 of the Bengal Tenancy Act and which are by no means easy to reconcile, militate against this conclusion. The majority of the decisions, to which we shall presently make a brief reference, do not really touch the cardinal question in controversy in this suit, but before we consider them, two important principles may be conveniently re-stated. In the first place, as is clear from the decision of the Full Bench in *Kripa Sindhu Mukerjee v. Annada Sundari Debi* 35 C. 34 (F. B.) : 6 C. L.J. 273 : 11 C.W.N 983 the Bengal Tenancy Act is not a complete code even in respect of the law of landlord and tenant, much less does it profess to incorporate the general principles of the law of contract and the doctrines of equity jurisprudence, in so far as they may have to be applied in the determination of disputes between landlords and tenants. In the second place, as is pointed out by Lord Haldane, L.C in *Kreglinger v. New Patagonia Meat & Cold Storage Co.* (1914) A.C. 25 : 83 L.J. Ch. 79 : 100 L.T. 8025 : 58 S.J. 97 : 30 T.L.R. 114 each case forms a real precedent only in so far as it affirms a principle and the binding force of previous decisions, unless the facts are indistinguishable, depends on whether they establish a principle: "To follow previous authorities, so far as they lay down principles, is essential, if the law is to be preserved from becoming unsettled and vague. In this respect the previous decisions of a Court of co-ordinate jurisdiction are more binding in a system of jurisprudence such as ours than in systems where the paramount authority is that of a code. But when a previous case has not laid down any new principle, but has merely decided that a particular set of facts illustrates an existing rule, there are few more fertile sources of fallacy than to search in it for what is simply resemblance in circumstances, and to erect a previous decision into a governing precedent merely on this account. To look for anything except the principle established or recognised by previous decisions is really to weaken and not to strengthen the importance of precedent. The consideration of cases which turn on particular facts may often be useful for edification, but it can rarely yield authoritative guidance."

5. As regards the decisions upon the construction of Section 85 of the Bengal Tenancy Act, it is plain that a long line of cases affirms the view that a lease

granted in contravention of Section 85(1) is operative as between the grantor and the grantee *Madan Chandra Kapali v. Jaki Karikar* 6 C.W.N. 377; *Gopal Mondal v. Eshan Chunder Banerjee* 20 C. 148; *Tamijuddi v. Asgar Howladar* 1 Ind. Cas. 942 : 36 C. 256 : 13 C.W.N. 183; *Bipin Behari Hati v. Amrita Lal Bhattacharji* 3 Ind. Cas. 685 : 9 C.L.J. 76; *Arab Ali v. Rachimaddi* 10 Ind. Cas. 562 : 13 C.L.J. 656; *Ali Mahammad Bepari v. Nayan Rajah Bhuiya* 13 Ind. Cas. 912 : 15 C.L.J. 122 : 16 C.W.N. 620n; *Abdul Karim Patwari v. Abdul Rahman* 13 Ind. Cas. 364 : 15 C.L.J. 672 : 16 C.W.N. 618; *Janaki Nath Hore v. Prabhasini Dasi* 30 Ind. Cas. 893 : 22 C.L.J. 99 : 19 C.W.N. 1077 and *Lani Mia v. Muhammad Easin Mia* 33 Ind. Cas. 448 : 20 C.W.N. 948. The only case which supports the contrary view is the decision of Geidt, J. in *Basarutullah Mundle v. Kasirunnessa Bibi* 11 C.W.N. 190 which, so far as we have been able to discover, has not been followed in any subsequent decision. The conclusion as to the binding character of the lease as between grantor and grantee may be supported on one of two grounds, namely, first that the validity of a lease granted in contravention of Section 85(1) can be questioned only by the landlord of the grantor or by the holder of a derivative title from him, or secondly, that the doctrine of estoppel binds the grantor and grantee equally and debars each from disputing the validity of the lease to the detriment of the other. The first of these principles has not been universally accepted and is possibly in conflict with the rule enunciated in *Jarip Khan v. Durfa Bewa* 15 Ind. Cas. 476 : 16 C.L.J. 144 : 17 C.W.N. 59 and *Telam Pramanik v. Adu Shaikh* 18 Ind. Cas. 791 : 17 C.W.N. 463. These cases, however, do not affect the authority of the decision in *Manik Borai v. Bani Charan Mondal* 10 Ind. Cas. 469 : 13 C.L.J. 649 which was followed in *Ganesh v. Thanda S.A. No. 2246 of 1912* (decided by Fletcher and Richardson, JJ., on 22nd July 1914). It is not necessary for our present purpose to make a choice between the two classes of cases, one of which places a limited construction on Section 85 and holds it to have been enacted for the benefit of the superior landlord, while the other places a wider construction upon the section and allows a stranger to avail himself of its provisions to defeat the title of a grantee who had not obtained possession before or after the grant. Apart from the conflict on this point, there is no serious doubt as to two propositions, namely, first, that the title of a grantee, who can fall back upon prior possession as tenant or otherwise, cannot be defeated by mere proof of contravention of Section 85, and secondly, that, as between grantor and grantee the rule of estoppel applies when elements essential to attract its operation are proved to exist. In the case before us, as we have already explained, the defendants are precluded by the doctrine of estoppel from asserting that their obligations are other than those set out in the lease of the 27th August 1896, on the strength whereof they obtained possession from their grantors. In this view, the decree of the Subordinate Judge cannot be supported.

6. We have finally to consider the question of the measure of damages. The defendants dispute only the first two items claimed by the plaintiffs. The first item must obviously be disallowed; the plaintiff* cannot claim the value of the

property lost to them as also the sale-proceeds, which simply represent the property transformed into money. As regards the second item, the claim is clearly excessive. As between the plaintiffs and the defendants, the property may be deemed to be a tenure, but the only reliable evidence as to the market value of a permanent tenure which comes from the side of the defendants is, that it sells for 13 years' purchase. As the net profit derivable by the plaintiffs was Rs. 150 a year, the value cannot be estimated at a higher figure than Rs. 1,950. The appeal will consequently be allowed and the plaintiffs will have a decree for Rs. 4,318 with interest thereon at 6 per cent, per annum from the date of the institution of the suit to the date of realisation. The plaintiffs will also have their costs, in proportion to the sum decreed both here and in the Court below.