
(1911) 02 CAL CK 0029
In the Calcutta High Court

Baroda Prosad Roy Chowdhury

APPELLANT

Vs

Tarak Nath Mandal

RESPONDENT

Date of Decision : 16-02-1911

Acts Referred:

Bengal Tenancy Act, 1885 — Section 61

Citation : 9 Ind. Cas. 557

Hon'ble Judges : Coxe, J

Bench : Single Bench

Judgement

Coxe, J.—The only question that has been argued in this case is whether the evidence accepted by the learned Subordinate Judge justifies his conclusion that the plaintiff-appellant recognised the defendant's tenancy.

2. It was held in the case of Deb Narain Dutt v. Baidya Math Madak Napit 2 Ind. Cas. 148 : 14 C.W.N. 68 that this is a question of law and can be dealt with in second appeal.

3. The evidence upon which the learned Subordinate Judge relied may be divided into three portions. The first consists of rent receipts, in the great majority of which the defendant is described as marfatdar. It appears that the original tenant was one Nitai Bairagi who died sometime before 1881. The defendant, Tarak Nath Mandal, purchased from Nitai's widow in 1881, and thereafter appears to have paid rents and obtained receipts in which Nitai Bairagi was mentioned as the real tenant and he himself as marfatdar. If the case depended on these receipts I should have been strongly inclined to accept the argument of the learned Pleader for the appellant. It was held in the case which I have already cited that receipts given to a transferee of a holding in which he is described as marfatdar do not amount to a recognition of the transfer. With that decision I am in entire agreement." As I understand the term, marfatdar implied that the person so called is acting in some way as an agent for another and is not and cannot be paying rent on his own account like the dakhil kars in the case of Naba Kumari Debi v. Behari Lal Sen 6 C.L.J. 122 : 2 M.L.T.433: 11 C.W.N. 865 : 4

A.L.J. 570 : 9 Bom. L.R. 846 : 17 M.L.J. 397 : 34 C. 902. Nor do I feel greatly pressed by the fact on which the Munsif laid stress that in this case Netai Bairagi was dead and consequently the defendant could not have been paying rent as an agent for him. It is customary in these provinces for both holdings and tenures to remain in the names of their original tenants long after these tenants have died; and it would be impossible to hold that any person who pays rent on account of a holding immediately after a tenant's death and obtains receipts in which he is described as marfatdar for the old tenant is thereby recognised by the landlord as the new tenant. If then the case depended on these receipts I should be inclined to hold that the use of the word marfatdar implies that Tarak Nath Mandal had not been paying rent on his own account but on behalf of the real owner of the holding standing in the name of Netai Bairagi.

4. The next piece of evidence is the chalan by means of which Tarak Nath Mandal deposited the rent of this holding u/s 61 of the Bengal Tenancy Act. That rent was subsequently withdrawn by the plaintiff's agent. This appears to me to be a somewhat stronger piece of evidence on behalf of the defendant, for in that chalan his name appears as applicant in the column headed "name of persons on whose behalf the money is tendered." In the column for remarks, however, it is stated that the rent is deposited on account of the holding standing in the name of Netai Bairagi, So that this piece of evidence also cannot be regarded as wholly conclusive.

5. Finally, there is the road-cess return filed by the Court of Wards when they were managing the plaintiff's estate during his minority. In this the holding was described as that of Netai Bairagi and the defendant was described as sarbarahkar. This appears to me a much stronger piece of evidence. When a landlord receives rent he may very naturally enter in the rent receipt not only the name of the tenant but also the name of the person who actually pays in the money and it is not necessary from that fact to fix him with any recognition of the latter. But in filing a road-cess return no such necessity arises. All that the landlord has to do is to state who his tenants are, so that road-cess may be properly assessed; and it is quite unnecessary for him to mention the name of a third party who according to his view has no concern with the holding. The fact that the Court of Wards when managing the plaintiff's estate should have thought it necessary to record Tarak Nath Mandal's name as being concerned in some way or other with this holding is certainly a strong piece of evidence that in the opinion of the then landlord he had really some connection with it, and if the learned Sub-Judge, relying on this piece of evidence, came to the conclusion that the landlord had recognised the transfer to Tarak Nath Mandal I am not prepared to say that he committed any error of law.

6. It has also been argued that the learned Subordinate Judge has omitted to notice the fact that the plaintiff brought certain suits for rent against Netai's widow which the defendant satisfied. But the learned Subordinate Judge refers twice to the fact that the case had been elaborately considered by the Munsif and

says that he does not desire to add unnecessarily to what the Munsif had said inasmuch as he accepted his reasoning and conclusions. Therefore, there is no reason to suppose that this matter of the former rent suits was really absent from the mind of the Subordinate Judge in disposing of the case.

7. The result would be, the appeal is dismissed with costs.