
(1940) 07 CAL CK 0013
In the Calcutta High Court

Biraja Sundari Baisnabi

APPELLANT

Vs

Sm. Mahamaya Sen Poddar and Another

RESPONDENT

Date of Decision : 31-07-1940

Acts Referred:

Citation : AIR 1941 Cal 399

Hon'ble Judges : B.K. Mukherjea, J

Bench : Division Bench

Judgement

B.K. Mukherjea, J.—This appeal is on behalf of the defendant and it arises out of an action in ejectment. The plaintiff's case was that the land in suit which is a piece of Chandina land was held previously by one Kusum Kumari Vaishnabi in tenancy right. Kusum Kumari sold her interest by a kobala dated Falgoon 7, 1324 B.S. to Harendra Chandra Sen Poddar, the kobala being taken in the name of Durga Mohan Das. Thereafter Harendra made a gift of this property to his wife, Mahamaya, by a registered deed of gift dated Pous 4, 1341 B.S. and Mahamaya granted an ijara lease of this property in favour of the present plaintiff for a period of three years commencing from Pous 21, 1342 B.S. The plaintiff's case in the plaint was that the defendant Biraja Sundari Vaishnabi was a tenant under Kusum Kumari prior to the sale, and that after the sale she became a tenant under Harendra and then under Mahamaya and the plaintiff. As this was a tenancy at will, the plaintiff sought to eject the defendant by service upon her of a notice to quit. The defence, in substance, was that the purchase in the name of Durga Mohan Das was not for the benefit of Harendra alone, but that the property was purchased with the funds of the joint firm of Radha Kishore Sen Poddar and others in which Harendra had only a one-fourth share.

2. It was said that the defendant came to live in the disputed property while Kusum Kumari was holding the land as a tenant under all the Poddars, and when Kusum Kumari left the property in 1328, she became a tenant under the joint firm and actually executed a kabuliati in favour of two of the partners namely, Krishna Kishore Sen Poddar and Ramesh Chandra Sen Poddar on 18th April

1928. Her case was that she was not a tenant under Harendra alone, and consequently the plaintiff was not entitled to sue her in ejectment. Both the Courts below decreed the plaintiff's suit. They held concurrently that the conveyance taken in the name of Durga Mohan Das was for the benefit of Harendra alone and that he was exclusively entitled to the superior interest in the land in suit. I may take that to be a finding of fact which is binding on me in second appeal, and I must also accept the finding arrived at by both the Courts below, though this case was not definitely made in the plaint, namely that after the sale to Harendra, Kusum Kumari attorned to the latter by executing a fresh kabuliat in his favour. The only other fact found by the Courts below which is material for me to mention in this connexion is that during the subsistence of the tenancy which was created by the kabuliat of 1325 B.S. Biraja Sundari was brought into the land by Kusum Kumari either as a licensee or as a sub-tenant. The lower appellate Court does not definitely say as to whether the defendant was a- sub-tenant or a licensee. But even taking that she was really a sub-tenant, the finding seems to be that the defendant went on possessing the property exclusively after Kusum Kumari left it at the expiry of her lease.

3. It seems to me that taking the findings as they stand, it is difficult to say that a relationship of landlord and tenant is established between the plaintiff's predecessor on the one hand and the defendant on the other. Assuming that Kusum Kumari was a tenant under Harendra exclusively, her tenancy expired in the year 1328, unless it was found that she was holding over after the expiry of the lease. As soon as the interest of Kusum Kumari came to an end, that of the present defendant as a sub-lessee could not survive, and she could not rank as a tenant under the plaintiff's predecessor, Harendra, unless there was an act of attornment on her part. It is not in evidence that she ever paid any rent to Harendra or Mahamaya or was ever recognized by them as a tenant. It is true that in the written statement she admits that she was a tenant under Harendra and his three cosharers. But if that admission is to be taken against her it must be taken in its entirety. On the findings arrived at by the Courts below that it was really a purchase by Harendra, I am inclined to hold that there was no relationship of landlord and tenant between Harendra and the defendant. It would certainly be open to Harendra or his successor to recover possession of the property on establishment of his title in a properly constituted suit. But he cannot certainly sue the defendant in ejectment as a tenant after service of a notice to quit. In my opinion therefore this; appeal must succeed on this point and this point alone. The result is that the judgment and decrees of the Courts below are set aside and the plaintiff's suit is dismissed with costs throughout. I assess the hearing fee in this Court at one gold mohur.