
(1995) 12 CAL CK 0003
In the Calcutta High Court
Case No : C.O. 3434 of 1991

Dhirendra Nath Nath

APPELLANT

Vs

Mahadev Nath and Others

RESPONDENT

Date of Decision : 14-12-1995

Acts Referred:

Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 6

Citation : 100 CWN 146

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Indrajit Mondal, for the Appellant; S.P. Roy Choudhury and Dilip Kr. Mondal, for the Respondent

Final Decision : Allowed

Judgement

Basudeva Panigrahi, J.—This revision is directed against an order No. 80 dated 5.6.1991 in T.S. No. 99/84 passed by the 2nd Court of the Assistant District Judge, Alipore, 24-Parganas (S) rejecting the application of defendant No. 7 for amending the preliminary decree. The opposite party No. 1 had instituted the Title Suit No. 99 of 1984 before the 2nd Assistant District Judge, Alipore for partition against the petitioner and the opposite parties Nos. 2 to 8 in respect of "A", "B", "C" and "D" schedule property. The suit was preliminarily decreed on 30th November, 1989 and the petitioner was allotted 1/2 share over "D" schedule property. In respect of the other properties defendant No. 7 did not claim any interest. The plaintiff/opposite party No. 1 purchased 1/7 share in "A" and "B" schedule property and 1/14 share in "D" schedule property. The opposite party nos. 2 to 7 (defendant No. 1 to 6) were allotted 1/7 the share each in "A" and "B" schedule property and 1/14 share in "D" schedule property. Undisputedly "D" schedule property is a thika tenanted property and the structure was constructed by the predecessors of the petitioner and the opposite parties. Late Panchu Gopal Nath. It is further admitted that the petitioner and the opposite parties are thika tenants in "D" schedule property under the

Zamindar Sasanka Bhusan Saha and others whose interest had vested in the State Government under the Calcutta Thika Tenancy Act, 1981. After the provision of the aforementioned Act came into force the defendants No. 3 to 7 sold their shares in the structure over the "D" schedule property to the defendant No. 7/ petitioner by registered sale deed No. 911 dated 27th July 1990. Defendant/ opposite party No. 2 sold his 1/14th share in the structure over "D" schedule property to the petitioner by registered sale deed dated 1st November, 1990. Thus, the petitioner claimed to have acquired ownership of 13/14th share of "D" schedule property and the remaining 1/14th share belongs to the opposite party No. 1/plaintiff. Following the aforementioned purchase the petitioner is said to have filed an application for amending the preliminary decree in conformity with the purchase deeds over 13/14 share of the suit schedule "D" property.

2. The plaintiff/opposite party No. 1 filed a written objection before the Trial Court, inter alia, pleaded that the transfer of thika tenant land being prohibited in law, even such transfer had taken place, those would not convey any title in favour of the defendant No. 7. The learned trial court considering the prohibition of transfer of thika tenanted land u/s 6 of Calcutta Thika Tenancy (Agriculture and Regulation) Act, 1981 rejected the prayer of the revisionist.

3. Dr. Mondal, the learned counsel appearing for the revision petitioner, has advanced several contentions in support of the revision. He maintained that a preliminary decree could be amended subsequently taking into consideration of inter-vivos transfer. In this case, the defendant No. 7 purchased the interest of the other defendants under the strength of various sale deeds. So far as the amendment of preliminary decree for partition is concerned; it is depended on several factors, such as transfer of interest, inheritance, fluctuation of share likewise. Had it been an ordinary transfer, there could have been no legal inhibition for the amendment of the preliminary decree. But so far as the transfer of thika tenanted land is concerned the opposite party/plaintiff has taken a formidable stand that since such transfer is prohibited under the provision of Calcutta Thika Tenancy Act, the defendant No. 7 therefore, does not acquire any title. While examining the said contention it is necessary to quote the provision of Section 6 of the Act.

The rights of a thika tenant and other tenants occupying lands directly under the State under sub-section (1) shall, subject to the provisions of this Act, be heritable and shall not be transferable. No such tenant shall, without obtaining prior approval in writing from such authority as may be prescribed and without submitting a comprehensive development plan or improvement scheme for the holding, construct pucca structure. Any such scheme shall provide for alternative accommodation for bharatias in accordance with sub-section (2) of section 11.

Provided that a thika tenant or a tenant in respect of other lands which vest u/s 5 may construct a pucca structure for essential common facilities like common pathway, common bath, toilet, water supply, drainage, sewerage, lighting and

similar other purposes.

4. The learned court below taking the aforesaid provision into consideration seems to have taken the view that such transfer being prohibited under law, the defedant No. 7 could not have acquired any title under the strength of those sale deeds vis-a-vis his prayer for amendment of decree is bound to be rejected.

5. During the pendency of the revisional, application, the statute had undergone subsequent amendment under the Amending Act Calcutta Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 1993. Subsection 3 of the amending Act is quoted hereunder :-

The interests of thika tenants and tenants of other lands holding directly under the State under sub-section (1) shall be heritable and shall not be transferable except inter se amongst the heirs and existing co-sharers-interest or to the prospective heirs subject to the provisions of sub-section (1) of Section 7.

6. On a careful reading of the provision, the interest of thika tenants and the tenants of the other lands holding directly under the State shall be heritable and shall not be transferable. But a thika tenant shall be entitled to let out in whole or in part of the structures existing thereon, or constructed under the commencement of this Act on such lands. The transfer of thika tenancy right would be valid if the transfer is amongst the heirs and the existing co-sharers interest or to the prospective heirs.

7. Mr. Roy Choudhury, the learned counsel appearing for the plaintiff/opposite party, has however, stressed that even transfer between the co-sharers would be invalid if such transfer is only in respect of the structure standing on such thika tenancy land. While examining the contention of Mr. Roy Choudhury, the following Clause much be considered carefully "except inter se amongst the heirs and existing co-sharers-interest or to the prospective heirs" must be read disjunctively while interpreting the said provision. Therefore, if the aforementioned provision is read separately it would be an exception to the main section. If this clause is read along with the main provision then insertion of this clause will render otiose and superfluous. Therefore, the legislature in its wisdom has permitted inter se transfer amongst co-share interest or the transfer amongst prospective heirs. The expression subject to the provision of sub-section 1 of section 7 used in sub-section 3 of section 6 must relates to the transfer made by any other person but not between the transfer of thika tenancy right amongst the co-sharers and the prospective heirs. This amended provision came into force with retrospective effect from 18th January, 1982. Therefore, in the light amended provision the petitioners can indubitably be said to have acquired title from the other defendants namely his vendors.

8. From the above conspectus of the case, it emerged that the order of the learned Trial Court is not sustainable in law and it is bound to be vacated. The Trial Court is therefore, directed to consider the rights of the defendant No. 7 in the light of the claim under the sale deeds from the other defendants and if

necessary modify the preliminary decree in respect of the "D" schedule of the suit plaint. Thus, the revisional application is allowed and the orders of the learned trial court is vacated but in the circumstances the parties are directed to bear their own costs.