
(1897) 11 CAL CK 0008
In the Calcutta High Court

Doyal Chand Ghose

APPELLANT

Vs

Madhub Ram

RESPONDENT

Date of Decision : 19-11-1897

Acts Referred:

Bengal Tenancy Act, 1885 — Section 72
Transfer of Property Act, 1882 — Section 6

Citation : (1898) ILR (Cal) 445

Hon'ble Judges : Wilkins, J; Banerjee, J

Bench : Division Bench

Judgement

Banerjee, J.—This appeal arises out of a suit for arrears of rent brought by the plaintiff-respondent on the allegation that in execution of a decree held by him against Bibi Jarao Kumari, he purchased at a sale held by public auction the interest of the said Bibi Jarao Kumari in a certain quantity of land; that the defendant holds the said land at a certain rent; and that the rent payable in respect of the period in suit is due to him from the defendant.

2. The defence, so far as it is necessary to be referred to for the purposes of this appeal, was to the effect that the land in suit being basti land situated in Sulkea within the jurisdiction of the Howrah Municipality, the suit was not maintainable in the form in which it was brought and in the Court in which it was instituted; that there was no relation of landlord and tenant between the plaintiff and the defendant; and that the defendant was not liable for the rent claimed, and it had been paid to Bibi Jarao Kumari, and the plaintiff had given the defendant no notice of his purchase before such payment.

3. The first Court dismissed the suit on two grounds: first, because the plaintiff's purchase which was that of a portion of the interest of Bibi Jarao Kumari, which was a putni, was invalid in law; and, secondly, because the defendant was not exempted from liability to pay the rent in suit to Bibi Jarao Kumari. On appeal by the plaintiff, the Lower Appellate Court has reversed the first Court's decision, holding that the plaintiff has acquired a valid right by his auction purchase, to

claim rent from the defendant, and that the defendant must be taken to have had sufficient notice of the plaintiff's purchase after the date when the plaintiff took possession of the property purchased by him, and any payment made by the defendant subsequent to that date must be taken to have been made by him at his own risk.

4. In second appeal it is contended for the defendant-appellant that the decision of the Lower Appellate Court is wrong, first, because the purchase by the plaintiff of the interest of Bibi Jarao Kumari in a portion of the lands of her putni taluk was not valid in law; and, secondly, because the defendant was not liable to pay rent to the plaintiff when he did not give any notice to him in due form as required by Section 72 of the Bengal Tenancy Act.

6. In support of the first contention the learned Vakil for the appellant referred to Section 3 of Regulation VIII of 1819, and argued that as property in a putni taluk was a creation of Regulation VIII of 1819, such property could arise only so far as it was recognised by that enactment; and as the Regulation did not recognise the existence of separate property in any portion of the land of a putni taluk, what was sold here was not property, i.e., was not saleable property within the meaning of the law, and the plaintiff, therefore, could not have acquired any interest by his auction-purchase.

7. We are unable to accept this contention as sound. Though, no doubt, clause 1 of Section 3 of the Putni Regulation speaks of the entire putni, Section 6 affords indication of the validity, under certain conditions, of a transfer by the putnidar, extending, not only to fractional or aliquot parts of a putni taluk, but also to any alienation other than that of the entire interest, that is, to any alienation of the interest in any portion of the putni taluk, such portion not being an aliquot part or share, but being a portion of the land composing the putni. We may also refer to Section 6 of the Transfer of Property Act as showing that property of the kind that has been purchased by the plaintiff in this case is transferable, and could therefore be validly attached and sold under the Code of Civil Procedure. The first contention urged on behalf of the appellant therefore fails.

8. In support of the second contention, reference has been made to Section 72 of the Bengal Tenancy Act and to Rule 3, Chapter I of the Rules made by the Local Government under clause (2) of Section 189 of the Tenancy Act; and it is argued that as the notice has not been served in the manner prescribed by the said Rule, which is of general application, and should, therefore, be held to apply to this case, the mere fact of notice being presumable from the plaintiff having taken possession, according to the provisions of the Code of Civil Procedure, cannot be considered a sufficient compliance with Section 72 of the Bengal Tenancy Act, which makes the giving of notice of the transfer a condition precedent to the liability to pay rent to the transferee arising.

9. In answer to this contention, the learned Vakil for the respondent urges, in the first place, that the point now raised is different from that which was raised in

the written statement of the defendant, in the 9th paragraph of which he said: "If the plaintiff had given any information to or served any notice on the defendant the latter could find out the proper party and pay rents considerably"; in the second place that the provisions of the Bengal Tenancy Act were inapplicable to this case, which was a suit for rent on account of basti land situated within the limits of a Municipality; in the third place, that even if the Bengal Tenancy Act applied to this case, Sub-section 1 of Section 72, which is the provision relied upon, does not require the giving of the notice in any particular manner, and that the requirements of the law were fully satisfied when it was found that the defendant had notice of the purchase; and, lastly, that Rule 3 relied upon by the appellant was in its nature directory and not mandatory, and that all that was required was that the defendant should have notice of the transfer, the provisions relating to the mode in which notice ought to be served being intended only to secure a proper notice.

10. In answer to the first of these grounds upon which the appellant's contention has been sought to be met, the learned Vakil for the appellant points out that the defendant not only said what is stated in paragraph 9 of his written statement, but in an earlier part of that statement he urged that there had been no notice duly served. In answer to the second reason relied upon by the learned Vakil for the respondent it was urged that as the plaintiff brought his suit under the Bengal Tenancy Act, as he must have done when he claimed damages, and not interest on the arrears of rent, and the Court gave him a decree in accordance with such prayer, it was not open to the plaintiff to urge now that the case was not governed by the Bengal Tenancy Act. And as to the third and fourth grounds it was urged, in reply, that there was no distinction observed in the Bengal Tenancy Act between the giving of notice and the serving of notice, and that Rule 3 relied upon being of general application and mandatory in its character, should be held to govern this case.

11. We are of opinion that the first ground upon which the learned Vakil for the respondent seeks to meet the appellant's objection is not tenable, as the defendant in his defence not only said what has been pointed out in paragraph 9, but also raised the objection that no notice had been served upon him.

12. The question raised upon the second ground relied upon by the respondent is not altogether free from difficulty, having regard to the fact that the suit was evidently brought under the Bengal Tenancy Act, and there is nothing found as to the nature and incidents of the holding at its inception; but in the view we take of the remaining two grounds urged for the respondent, it becomes unnecessary to say more with reference to this second ground. We are of opinion that Sub-section 1 of Section 72 does not require that the notice therein contemplated should be given in any particular manner. In the first place a comparison of Sub-section 1 with Sub-section 2 of that section would show that, whereas in Sub-section 1 all that is said is that the tenant's liability to pay rent to the transferee would not accrue unless the transferee has, before payment to the original

landlord, given notice of the transfer to the tenant, Sub-section 2 enacts that where there is more than one tenant paying rent to the landlord, a general notice from the transferee to the tenants of the transfer in the prescribed manner shall be a sufficient notice for the purpose of this section. The prescribed manner, which by clause 15 of Section 3 means the manner prescribed from time to time by the Local Government by notification in the official Gazette, is therefore expressly limited to the case where there are more tenants than one paying rent to the landlord. That, however, admittedly, is not the case here.

13. A comparison of Section 72 with Section 73 also bears out the same view, for the notice contemplated in Section 73 is required to be given to the landlord in the prescribed manner. Then, again, in other places, such as clause (b) of Section 49, where a notice is contemplated, the Act speaks of the notice being served and not simply given; and Rule No. 3 of Chapter 1 of the Rules made by the Local Government under the Act. runs in these words :

14. Where no other mode of service of the notice is prescribed by the Tenancy Act, or by these Rules, service shall be effected in the manner prescribed for service of summons on the defendant." This evidently shows that Rule 3 is intended to apply only to those cases where the Act speaks of the service of notice and not merely of the giving of a notice. Rule 3 may apply to cases where the Act speaks of the giving of notice if such notice is required to be given in the prescribed manner. But we do not think it would be reasonable to hold that, although the Act may speak only of the giving of a notice without the qualifying words "in the prescribed manner," nevertheless a notice given in any way other than the prescribed manner should be treated as not being a sufficient compliance with the Act. Seeing that when the Legislature intended that the notice was either to be served or to be given in the prescribed manner, it has expressly said so, and seeing that in the provisions of the law, Sub-section 1 of Section 72, now under consideration, it has not taken care to say so, we do not think that it would be right to hold that it was nevertheless intended that notice under Sub-section 1 of Section 72 should be served in the prescribed manner.

15. What we have said above is sufficient for the disposal of the case. Were it necessary to determine the fourth point raised by the learned Vakil for the respondent, we should have been inclined to hold that Rule 3 of the Rules made u/s 189, in a case like this, was intended to be only directory and not mandatory. The two grounds urged before us on behalf of the appellant, therefore, both fail; and the appeal must consequently be dismissed with costs.

16. We should add that we are indebted to the learned Vakils on both sides for the able arguments that have been addressed to us in this case.