

(1970) 02 CAL CK 0004
In the Calcutta High Court

Fakir Chandra Chakravarty	Vs	APPELLANT
Pandit Sri Lakshmi Kant Jha and Others		RESPONDENT

Date of Decision : 19-02-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 6
West Bengal Estates Acquisition Act, 1953 — Section 2, 2(i)

Citation : 75 CWN 952 : 74 CWN 946

Hon'ble Judges : Paresh Nath Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Apurbadhan Mukherjee and Tarak Nath Roy, for the Appellant;Amarendra Mohan Mitra and Harinarayan Mukherjee for Respondent Nos. 1, 3 and 5 and Dwijendranath Lahiri for Deputy Registrar, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice Amiya Kumar Mookerji

1. This Letters Patent Appeal arises out of a suit for rent. The tenant Defendant is the Appellant before us.

2. The suit was instituted by two Plaintiffs for recovery of arrears of rent in respect of a tank for the years 1361 and 1362 B.S. of the suit tank, Plaintiff No. 1 was, admittedly, the proprietor. The Defendant-Appellant, who was Defendant No. 1 in the suit, was the settlement holder for the years 1359 to 1363 B.S. Plaintiff No. 2 took a lease of the said tank from Plaintiff No. 1 under a document, executed some time in March, 1955.

3. The learned Munsif decreed the suit for the year 1361 B.S. and dismissed it with regard to 1362 B.S. According to the learned Munsif, the Plaintiffs were intermediaries and their interest had vested in the State with effect from 1st Baisakh, 1362 B.S. with the result that they became disentitled to realize rent from Defendant No. 1, the tenant in occupation, for the year 1362 B.S. and onwards.

4. On appeal by the Plaintiffs, this decision was modified by the learned Subordinate Judge by passing a decree for the year 1362 B.S., passed by the learned Munsif in favour of Plaintiff No. 2, the decree for 1361 B.S.. passed by the learned Munsif in favour of Plaintiff No. 1, being maintained or upheld by the learned Subordinate Judge. Before the learned Munsif, it was contended on behalf of the Plaintiffs that the disputed tank was a tank fishery and the Plaintiffs were entitled to retain the same. That argument was rejected by the learned Munsif upon the view that, on the evidence before the court, the disputed tank would not come within the definition of tank fishery under the West Bengal Estates Acquisition Act. The learned Subordinate Judge, however, took a different view of the matter and his conclusion on this part of the case was that the disputed tank was a tank fishery and he held that, even if Plaintiff No. 2 was an intermediary, he was entitled to retain the same, having regard to the said character of the disputed property and as a consequence, to recover rent from the Defendant tenant for the year 1362 B.S. He further held that Plaintiff No. 2 was not an intermediary but a non-agricultural tenant and, therefore, in any view of the matter, he was entitled to realize rent for the year 1362 B.S.

5. On second appeal to this Court, this decision of the learned Subordinate Judge was affirmed by our learned brother K. C. Sen, J. and, against his said decision the present appeal has been filed under Clause 15 of the Letters Patent by the unsuccessful tenant Defendant No. 1 on leave, obtained from our learned brother under the said Clause.

6. The only ground, which was taken in the Memorandum of Appeal in this Letters Patent Appeal, was to the effect that, in any view of the case, the Plaintiffs' claim would be hit by the proviso to Sub-section (2) of Section 6 of the West Bengal Estates Acquisition Act, even accepting that the disputed property was a tank fishery.

7. Having heard the learned Advocates and having considered the materials before us, we are clearly of the opinion that the matter has been really approached in the three courts below from a standpoint, which does not seem to be strictly relevant. The only question, which ought to have been considered in the facts of this case, was whether Plaintiff No. 2 was an intermediary within the meaning of the West Bengal Estates Acquisition Act as, if he was an intermediary, his interest would, obviously, vest in the State with effect from 1st Baisakh, 1362 B.S., be the disputed property a tank fishery or not, and he would be disentitled to realize rent from the Appellant for the disputed year, namely, 1362 B.S. If, on the other hand, he is not an intermediary, he will be entitled to realize the said rent from Defendant No. 1 Appellant irrespective of the question whether the disputed property is a tank fishery or not within the meaning of the aforesaid Act. We have, therefore, to consider only whether Plaintiff No. 2 is an intermediary under the above Act.

8. The disputed tank would, obviously, come within the definition of "non-agricultural land", as contained in Section 2 Clause (j) and the Plaintiff No. 2,

upon that footing, would, obviously, come within the definition of "non-agricultural tenant", as defined in Section 2 Clause (K) of the said Act. The Defendant No. 1 would also be a non-agricultural tenant on the same reasonings. If, therefore, a non-agricultural tenant of a superior degree be an intermediary under the said statute, the last non-agricultural tenant in actual occupation of the demised land being only excepted from the relative definition, as contained in Sec 2, Clause (1) the instant appeal should succeed; otherwise this appeal must fail. As we had occasion to say in a previous case, if the matter had been *res integra*, something could have been said in support of the view having regard to the wording of the definition of intermediary in the aforesaid Section 2(i) and that might have been of assistance to the Appellant. There is, however, the recent decision of the Supreme Court reported in *Shibsankar Nandy Vs. Prabartak Sangha and Others*, where at p. 943, this point appears to have been considered in a short paragraph and their Lordships' conclusion was that non-agricultural tenant of whatever degree would be excepted from the above definition of intermediary under the above Act. We are bound by the said decision and, accordingly, we have to hold in the instant case that Plaintiff No. 2 would not be an intermediary with the result, as already stated that he will be entitled to realize rent from Defendant No. 1 for the year 1362 B.S.

9. Upon that view, this appeal must fail and will be dismissed.

There will, however, be no order for costs either in this Court or in any of the courts below.

Paresh Nath Mookerjee, J.

10. I agree.