
(1937) 07 CAL CK 0006
In the Calcutta High Court

Gadadhar Roy Choudhury and Others	APPELLANT
Vs	
Dhirendra Nath Ghose and Others	RESPONDENT

Date of Decision : 16-07-1937

Acts Referred:

Citation : AIR 1938 Cal 180

Hon'ble Judges : Nasim Ali, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

Nasim Ali, J.—This appeal arises out of a suit for a declaration that certain tenure which the plaintiffs held under the defendants is not liable to be sold under the Patni Regulation and for a perpetual injunction restraining the defendants from selling the tenure under the Patni Regulation. The Courts below have agreed in dismissing the suit. Hence this appeal by the plaintiff. The tenure was created by a potta, dated 29th Aswin 1308 corresponding to 15th October 1901. The potta which is Ex. (1) in this case describes this tenure as a patni. The contention of the learned advocate for the appellants is that as in this potta there is no express provision for sale of the patni taluk, for arrears of rent no presumption of its liability to sale under the Patni Regulations attaches to this tenure. In *Krishtomonee Debea v. Goorogobind Shiehanto*, 2 *Sevastre's Rep* Vol. II, 173, L.S. Jackson and E. Jackson JJ. observed as follows:

We think . . . that on attentive comparison of [the different sections of Regulation 8 of 1819 a patni taluk created subsequently to the passing off that. Regulation must be held liable to sale even though an express condition to that effect may not have been inserted in the kabuliyat. We find" no authority for the supposition that since the recognition by that enactment, of tenures of a particular kind under a specified name, there have been patni taluks of two descriptions, one liable to sale, the other not so liable. It seems to us that when parties mutually agree on the one hand to create, on the other to accept a tenure which they call a patni taluk, without actual words limiting or defining it as something of a separate kind, they intend to make it a patni taluk within the meaning of

Regulation 8 and consequently liable to sale u/s 3, Clause 3 of the Regulation.

2. The decision in this case has not been dissented from in any other subsequent cases. In *Sourish Chandra Roy Bahadur Vs. Saroj Ranjan Singha and Others*, Mitter J. while discussing this case observed as follows:

In this case it is to be observed that the patni was created subsequent to the enactment of the Patni Regulations and as no document was produced the presumption that the words "patni taluk" bore the meaning ascribed to it by Regulation was not displaced or rebutted.

3. The patni taluk in question was created long after Patni Regulations were enacted. I cannot add usefully anything to the above observations of the learned Judges in *Krishtomonee Debea v. Goorogobind Shiehanto 2 Sevastre's Rep Vol. II, 173* case in answer to the contention of the learned advocate for the appellants that the mere use of the words "patni taluk" in the potta of 1901 without a special clause reserving the right to sell for arrears of rent does not carry with it the presumption that the tenure is liable to be sold under the Patni Regulations. The next question is whether there are any other terms of the potta which displace or rebut the presumption and make the tenure in question a tenure other than a patni taluk within the meaning of the Patni Regulations. It was contended on behalf of the appellants that there were certain clauses in the potta which limited or defined the incidents of the patni taluk and which would indicate that the right to bring to sale for arrears of rent under the Patni Regulations was given up by the landlord. The learned advocate for the appellants drew our attention to the following terms in Clause (5) of the potta:

If there be latches on your part to pay rent, etc, I shall be entitled to realize the entire dues consisting of the principal sum together with interest and costs by attachment and sale of any moveable or immovable properties standing in your own names or benami in the names of others owned by you after bringing a suit according to the law relating to the landlord and tenant, regarding realization of rent etc, that are now in force and shall come into force in future and on getting a decree therein You shall abide by the laws relating to realization of rent that are now in force and shall come into force in future.

4. It was contended by the learned advocate that the opening lines of the above clause exclude the applicability of the law relating to the realization of putni rent under the Putni Regulations to the tenure in question, as the parties simply contemplated the realization of putni rent by suit under the general law. In view of the terms contained in the concluding lines however, I am unable to accept this contention. The words used there are very wide. They indicate that the parties intended that all the laws relating to realization of putni rent including Patni Regulations would apply to the tenure in question. If the object of the opening passage was to exclude the tenure in question from the operation of the Putni Regulations there was no necessity of the stipulations contained in the concluding lines. Again if the words in the concluding passage are not given a

wide meaning as indicated above, but are read as controlled by the opening passage, then in order to give proper effect to both the passages, the last passage must refer to laws relating to the realization of putni rent other than the general law under which the putni rent was intended to be realized as stated in the opening lines. The law referred to in the concluding passage must therefore be the law relating to the realization of putni rent under the Putni Regulations. The clauses in the potta on which the learned advocate relied for showing that a tenure of a different kind was intended to be created do not support his contention. There is nothing in this potta which indicates that the landlord gave up his right to bring the putni tenure to sale under the Putni Regulation and confined his remedy only to suits for recovery of the arrears of rent under the general law. The Courts below were therefore right in dismissing the suit. The appeal is accordingly dismissed with costs.

B.K. Mukherjea, J.

5. I agree with my learned brother in the reasons and decision and I would like to add a few words. The whole controversy centres round the point as to whether the tenure which is held by the plaintiffs under the defendants and which is described to be a putni is in reality a putni which attracts the operation of the provisions of Regn. 8 of 1819 and is saleable u/s 8 of that Regulation. Mr. Gupta argued that it could not be sold under the Regulation, as the essential requirement which has got to be fulfilled, before the landlord can ask the Collector to bold a sale under the Regulation, is the existence of a stipulation in the engagement interchanged between the zamindar and the tenant reserving a rights of sale in case of default in the payment of rent. Mr. Gupta has referred in the first place to certain recitals in the Preamble to the Regulation which describes the origin and history of the putni taluks, and which mentions inter alia that it was one of the usual incidents of a taluk of this type, that there was an engagement that the tenure might be brought to sale by the zamindar in case of an arrear and if the sale did not yield a sufficient amount, then the other properties of the defaulter would be answerable for the demand. The Preamble after that goes on to say that it was the policy of the Legislature in enacting this Regulation to concede to the zamindars a right of holding a sale both in the mid-year and also at the end of the year whenever there was reservation of the right of sale irrespective of the presence or absence of any stipulation to that effect in the putni deed or in the Regulations under which the rents were collected at that time.

6. The contention of Mr. Gupta, in substance therefore is that unless and until there is a reservation of this character which is laid down specifically in Section 8, Putni Regulation, the power of sale which is exercisable by the zamindars under the Regulation does not exist. Now in this particular case it may be pointed out that the taluk was created in the year 1901 long after the Putni Regulation came into existence. It is not only described as putni potta and the taluk spoken of as a putni taluk throughout, but there are other provisions in the document

which unmistakably indicate that the intention of the parties was clearly to create a putni taluk of the type recognized in Regn. 8 of 1819... The recital in the Preamble obviously related to the state of affairs before the Putni Regulation was enacted, and as pointed out by their Lordships of the Judicial Committee in *Brindaban Chunder Sircar v. Brindaban Chunder* (1874) 1 I.A. 178 that it was not an enactment but merely a recital. After the Regulation was passed the expression "putni taluk" acquired a distinct technical meaning and its incidents were specifically laid down in Section 3 of the Putni Regulation, including the right of the zamindar to put it up to sale twice every year. In a case therefore where a putni taluk specifically described as such is created after the year 1819, the general principle is that the parties must be intended to have created a taluk of the denomination given in the Putni Regulation itself with all the incidents attached to it under that Regulation. This view, as my learned brother pointed out, was laid down very clearly in *Krishtomonee Debea v. Gooroogobind Shiehanto* 2 *Sevastre's Rep* Vol. II, 173 which was affirmed by the Judicial Committee in *Brindaban Chunder Sircar v. Brindaban Chunder* (1874) 1 I.A. 178.

7. As was pointed out by the learned Judge in the earlier case, it may be, that there are words in the document which would go to limit or restrict the rights which a zamindar would ordinarily have under the Putni Regulation or which would define the incidents of the tenure in a different way but unless and until such things are conclusively established, the prima facie position would hold good that the taluk would be a taluk according to the Regulation 8 of 1819 and the zamindar would have the power of a sale by summary process. Mitter J. in the later case, in *Sourish Chandra Roy Bahadur Vs. Saroj Ranjan Singha and Others*, , expressly upheld the propriety of this view and distinguished that case on the two grounds that the alleged putni was created prior to Regn. 8 of 1819 and that the terms of the patta clearly indicated that the parties did not intend to create a putni taluk of the description given in the Regulation.

8. Now the question therefore is whether in this particular case there is anything in the document which is executed between the parties which either takes away the power of summary sale which would attach impliedly to all putni taluks or which would go to show that the parties had not in mind a putni taluk of the type created by Regn. 8 of 1819. Mr. Gupta has drawn attention to the provision of para. 5 of the putni potta. The opening lines, are rather couched in a very general and comprehensive way. It lays down that whenever there would be a default in the payment of rent, the landlord would be entitled to institute suits under the law in existence for the realization of arrears of rent as between landlord and tenant and having got decrees would be able to attach anything, moveable or immovable properties, whether standing in the own name of the tenant or in the benami of others. Mr. Gupta has conceded that it is not necessary that an express power of summary sale should be reserved in the document. The only stipulation necessary is that there should be power reserved to the landlord of putting up a tenure to sale in case of a default in the payment of rent. No doubt there are no direct words to that effect in this part of the potta,

though it may be argued that when all properties moveable and immovable of the tenant are specified it does not exclude the tenure in arrears. Even if no such interpretation is borne out by the language of this part of the document, the question that we have to answer is whether these words have in reality taken away the right of summary sale which a landlord would ordinarily enjoy if the taluk created is of putni type. The answer to that must be in the negative. Not only these words suggest that the parties did not intend to forgo the rights that are embodied in Regn. 8 of 1819 but as my learned brother pointed out the words coming at the end of this paragraph and under which all the laws and regulations relating to realization of malguzari were expressly kept intact conclusively establish that the parties did not intend to give up their rights under the Putni Regulation and the words at the beginning of the paragraph were not intended to limit in any way the rights of the zamindara under the Regulation. So I agree with my learned brother in holding that the taluk held by the plaintiffs was really a putni taluk. Hence this appeal must be dismissed.