

(1911) 02 CAL CK 0012
In the Calcutta High Court

Girish Chandra Guho and Others

APPELLANT

Vs

Khagendra Nath Chattopadhyaya and

RESPONDENT

Date of Decision : 23-02-1911

Acts Referred:

Bengal Tenancy Act, 1885 — Section 13, 167

Citation : 9 Ind. Cas. 1001

Hon'ble Judges : Teunon, J; Mookerjee, J

Bench : Division Bench

Judgement

1. The substantial question of law raised in this appeal is one of some novelty and turns upon the true construction of Section 13 of the Bengal Tenancy Act. The circumstances under which the question has been raised are of some complexity, but may be briefly narrated in so far as it is necessary to state them for our present purpose. The plaintiff is owner of a zemindari which bears No. 2694 on the Revenue Roll of the Collector of Backergunge. Under the zemindari is a transferable taluk known as Kamdeb Guha, which was in existence so far back as 1810, but has not been traced back to the time of the Permanent Settlement. On the 20th June 1898, the plaintiff purchased the taluk at a sale held in execution of a decree obtained by him in a suit for the recovery of arrears of rent. The sale was confirmed on the 4th April 1899, and possession delivered to the purchaser on the 29th July following. The plaintiff was, however, unable to obtain actual possession of all the lands, as the defendants alleged that they were in occupation on the basis of under-tenures created by the talukdars. The result was that on the 29th August 1900, the plaintiff had notices u/s 167 of the Bengal Tenancy Act served through the Collector, and on the 15th April 1903, commenced the present litigation for ejectment of the defendants on the ground that their subordinate interest, if any, had been extinguished and they were consequently trespassers in possession. The defendants resisted the claim on various grounds amongst which it is sufficient to mention two, namely, first, that the decree obtained by the plaintiff in the suit for recovery of rent instituted by him in 1895 had not the characteristics of a rent-decree and consequently the

sale in execution thereof had not affected the under-tenures and secondly, that the notices u/s 167 of the Bengal Tenancy Act were not in accordance with law, and were, therefore, ineffectual to extinguish the interest of the under-tenure-holders. The Court of first instance made a decree in favour of the plaintiff; upon appeal the District Judge has reversed that decision and dismissed the suit. On appeal to this Court, the decree of the District Judge was reversed and the case remanded for reconsideration. After remand the Subordinate Judge has affirmed the decision of the Original Court. The defendants have now appealed to this Court, and on their behalf the decree of the Subordinate Judge has been assailed on two grounds namely, first, that as some of the owners of the taluk were not made parties to the suit of 1895 for recovery of arrears of rent, the decree cannot operate as a decree for rent under the Bengal Tenancy Act; and, secondly, that as the notices u/s 167 of the Bengal Tenancy Act, were not in conformity with the provisions of the law, the, under-tenures have not been annulled.

2. In so far as the first of these questions is concerned, the case for the defendants was that certain persons of the name of Chandra Kant Basu, Raj Chunder Guha, the Chuckerbuttis and the Kanjiballis who had no interest in the taluk, ought to have been but were not joined as patties to the rent suit. The learned Subordinate Judge has found, with regard to the first two of these persons, that they were benamidars and had no beneficial interest in the taluk. The landlord, therefore, was not bound to join them as parties defendants, and the true character of the decree obtained by him cannot be affected by their absence from the suit *Joy Gobind v. Monamatha Nath* 33 C. 580. In so far as the Chuckerbuttis and the Kanjiballis are concerned he has not found whether in 1895 they had any subsisting interest in the taluk, although there are isolated expressions in his judgment which may indicate that he was not impressed with the soundness of the position attributed to them. He has held, however, that their absence from the suit for rent could not affect the character of the decree; as they were said to have been representatives in interest of persons who had never registered themselves in the books of the landlord. The view taken by the learned Subordinate Judge in substance is that if a person interested in a transferable tenure was not registered in the books of the landlord, and if, subsequently to the passing of the Bengal Tenancy Act, his interest was sold in execution at the instance of a creditor, the purchaser could not claim to be joined as a party defendant to a suit for rent, even though he might have paid the fees prescribed by Section 17 of the Bengal Tenancy Act read with the provisions of Section 13. To put the matter in another way, the view of the Subordinate Judge is, that as a sale in execution of a decree for arrears of rent against the registered tenant, would be operative against an unregistered co-sharer of the tenant, the purchaser of the interest of the unregistered co-sharer occupies no higher position. In the case before us, at a sale held in execution of a decree for rent against the recorded tenants, the taluk was purchased in 1864 by one Gagan Chander Das, who transferred the same to four persons, on the 13th

September 1864. Of these four persons two, Gopal Guha and Ransagar Guha, were registered in the books of the landlord the other two, Chandrakala and Krishnapria were not so registered. There were successive devolutions of the property by reason of sales in execution of decrees for rent obtained by the landlord against the recorded tenants or their representatives, but the details are not necessary for our present purpose. It is sufficient to state that the representatives of the unrecorded tenants executed a mortgage in 1871; the mortgagee enforced the security and brought the property to sale, when it was purchased by one Chandra Kumar Basu on the 22nd June 1887. There was another mortgage in 1882 for the satisfaction whereof a share of the taluk was sold execution in 1888, when the Chuckerbuttis and the Kanjiballis became interested in the property. It will be observed that sales we have mentioned took place after the provisions of the Bengal Tenancy Act had come into operation, and consequently the fee prescribed by Section 13 was paid. The question therefore, arises whether, if it is established that the Chuckerbuttis and the Kanjiballis were persons beneficially interested in the taluk the omission to make them parties in the suit of 1895 affected the nature of the decree. Section 13 of the Bengal Tenancy Act provides that upon a sale in execution of a permanent tenure under a decree other than a decree for arrears of rent due in respect thereof, the Court shall require the purchaser to pay into Court the landlord's fee prescribed by Section 12. It cannot be disputed that the transfer in favour of the purchaser is completed upon payment of the fee irrespective of its acceptance by the landlord *Kristo Bulluv Ghosh v. Kristo Lal Singh* 16 C. 642; *Chintamani Dutt v. Rash Behary Mundul* 19 C. 17 and *Mohesh Chander v. Saroda Prasad Singh* 21 C. 433. It follows, consequently, that as soon as the title of the purchaser has been perfected, the landlord is bound to look to the transferee for payment of rent which has accrued due since that date. No doubt, as contended by the learned Vakil for the respondent Section 13 does not expressly lay down what consequence are to follow from compliance with its provisions, nor does it define the results, which follow from failure to comply with them. But the object of the framers of the section is, in our opinion, perfectly plain. Under the law as it stood before the Bengal Tenancy Act was passed, the landlord was entitled to look to his recorded tenant for all rent until the name of the transferee had been recorded in his books *Sham Chand v. Brojo Nath* 21 W.R. 94; *Palit v. Hari* 27 C. 789 consequently, difficulties of the gravest character arose when the landlord demanded an exorbitant registration fee or when the transferee was called upon to prove that the landlord had notice of the transfer and had refused to recognise his rights. Section 13, as framed, removes both these difficulties, a prescribed fee has to be paid by the purchaser and the notice is to be served upon the landlord by the Collector, so that if the procedure laid down in Section 13 is followed, the fact of the sale is duly notified to the landlord. But it has been argued that the operation of Section 13 ought to be restricted to cases in which the transferor has his name registered in the books of the landlord. One may observe incidentally that the question could arise only where, as here, the interest of the transferor was acquired before the Bengal Tenancy Act came into

force. In our opinion the language used by the Legislature in Section 13 cannot rightly be restricted in the manner suggested. Section 13 applies to transfers of all permanent tenures, and it is immaterial whether the name of the tenant at the time of the sale has or has not been previously recorded in the books of the landlord. In fact, if the narrow construction suggested by the respondent were adopted, the policy of the Legislature at the time when the Bengal Tenancy Act was passed, might be completely nullified. It is well-known that at that time there were many tenures the holders of which had not been able to get their names registered in the books of the landlord, and if the cases of all these tenures were, for all time to come excluded from the operation of the beneficial provisions of Section 13, the very object of the framers of the Statute would be defeated in a large number of instances. Such unrecorded transferees were in no sense trespassers and were entitled to recognition at the hands of the landlord *Sarkies v. Kali Coomar* (1804) W.R. 98; *Nobeen Kishen v. Shib Pershad* 8 W.R. 96; *Bhooputee Roy v. Umbicca Churan* 17 W.R. 196 Section 27 Act X of 1859 Section 26 Act VIII of 1869, B.C. In fact the unrecorded transferees of a transferable tenure is a tenant, though his name is not on the books of the landlord *Azgar Ali v. Asaboddin Kazi* 9 C.W.N. 134. The difficulty which was created under the old law of which an illustration may be seen in the case of *Khetter Mohun v. Pram Kristo* 3 C.W.N. 371 is completely avoided under the Bengal Tenancy Act, and if the landlord in spite of notice that the tenure has passed into the hands of a transferee who has deposited the fee, chooses to bring a suit for rent against the recorded tenant, he does so at his own risk and has no reasonable ground for complaint if it ultimately turns out that the suit has not been properly constituted and the decree made therein cannot operate as a decree for rent. When a landlord finds that the name of one person is borne on his books as that of the tenant, but the fee has been paid and notice served at the instance of a purchaser of the tenure as the property of a person whose name has not been registered (see Section 13, etc., form of notice under that section, Appendix 1, Schedule 1 Form 4) there is no reason why he should not join the transferee as a party defendant to a suit for rent, along with the recorded tenant, if he thinks necessary so as to avoid possible future dispute as to the frame of the suit and the effect of the decree. It is worthy of note that if a different interpretation were adopted as to the scope and effect of Section 13, the operation of the other sections similar in scope, for example, Section 15, may be needlessly restricted. To take one illustration: after the death of A., the registered tenant, his heir B. might die before he could take action u/s 15; upon the analogy of the argument of the respondents, the heir of B. could not avail himself of the provisions of that section. We are, therefore, not prepared, for the reasons explained, to restrict the operation of Section 13 in the manner suggested. If we were to accede to the contention of the respondents, we should have to read in Section 13 "a permanent tenure held by a registered tenant" in place of the words a "permanent tenure". We must consequently hold that the reason given by the Subordinate Judge in support of his conclusion cannot be maintained. If the Chuckerbuttis and the Kanjiballis were interested in the tenure

at the date of the institution of the Rent Suit of 1895 inasmuch as they were not joined as parties defendants, the decree could operate only as a decree for money Ananda Kumar v. Haridass 27 C. 545 : 4 C.W.N. 608. It is necessary, therefore, to remand the case so that the Subordinate Judge may determine whether the persons left out of the suit were really interested in the tenure; and as the true position of the parties were not appreciated in the Court below, the Subordinate Judge will be at liberty to give suitable directions for the reception of additional evidence upon this point.

3. In so far as the second question is concerned, there is, in our opinion, no substance in it. The learned Vakil for the appellants has contended that the notice served u/s 167 of the Bengal Tenancy Act was not in accordance with the provisions of the law, because it does not appear to have been signed by the Collector. The notice is not on the record, and it is difficult, in the absence of all materials, to hold that it did not conform to the provisions of Section 167. We may point out, however, that the mere circumstance that the notice was signed by a Deputy Collector would not invalidate it, if he acted on behalf of the Collector Mahomed Kazem v. Naffar Chandra 32 C. 911 : 9 C.W.N. 803; Akhoy Kumar v. Bejoy Chand 29 C. 813. To bring the present case within the principle of the decisions in Ramdhon v. Surja Narain 2 C.L.J. 99 and Mohabat Singh v. Umahil Fatima 28 C. 66 the Court would have to hold that the Deputy Collector acted in excess of the powers conferred upon him. No such suggestion appears to have been specially made in the Court below, and the appellants are not entitled to a remand for the elucidation of this point. The second ground, therefore, cannot be supported.

4. The result is, that this appeal must be allowed, the decree of the Subordinate Judge set aside and the case remanded to him in order that he may determine the question, whether the Chuckerbuttis and Kanjiballis had, at the date of the institution of the Rent Suit of 1895, any subsisting interest in the tenure. If they had, the present suit must be dismissed, if they had no subsisting interest at that time, the suit must be decreed. The costs of this appeal will abide the result.

5. It is conceded that this decision will govern all the other appeals one of which (No. 2785 of 1907) arises out of a similar suit for ejectment, and three others (Nos. 2384, 2786, 2757 of 1907), out of suits-for rent by the, landlord, brought on the assumption that the immediate tenures have been annulled so as to bring him into direct relation with the under-tenants. These appeals will, therefore, be allowed, the decrees of the Subordinate Judge will be set aside and the cases remanded for determination of the question Mentioned. The costs of these appeals will abide the result.

We may add that in the case one appeal (No. 2384 of 1907) a question of res judicata was sought to be argued, but upon examination it transpired that there was no substance in the contention. We need not, therefore, examine the matter in detail.