
(1915) 07 CAL CK 0039
In the Calcutta High Court

Gopi Sundari Dasi

APPELLANT

Vs

Haladhar Mazumdar and Others

RESPONDENT

Date of Decision : 07-07-1915

Acts Referred:

Bengal Tenancy Act, 1885 — Section 158, 87

Citation : 30 Ind. Cas. 583

Hon'ble Judges : Mullick, J

Bench : Single Bench

Judgement

Mullick, J.—It is admitted that the bara taraf and chota taraf were two co-sharer landlords in possession of an occupancy holding measuring 14 bighas 5 cottas through certain tenants, Torap, Dinu, Juman and Jarip. Torap transferred his half share in the holding to Ananda and Dinu's share was inherited by his son, Enait. We next find that Juman and Jarip had somehow dropped out of the holding and that there was some kind of division of the lands of the holding, and that Ananda paid rent separately of his share to the bara taraf and Enait for his share to chota taraf. We are concerned in the present suit with Ananda's portion of the holding. It is admitted that Ananda by a Will bequeathed his land to Bipin, the son of his mistress, Dhonomoni, and that defendant No. 3, Bonalata, the widow of Bipin, made a dar-jote settlement in favour of defendant No. 2. The plaintiff, who is the bara taraf landlord, sued defendants in this case for ejectment on the allegation that Ananda had no right to bequeath to defendant No. 3 the occupancy holding which is not transferable by custom, and that consequently the other defendants who claim as under-tenants have also no right. The basis of the plaintiff's case is that there was a division of the holding as between the landlords on the one hand and the tenants, Ananda and Enait, on the other, by which a separate non occupancy-holding was created in favour of Ananda for an area of 7 bighas 21/2 cottas with a rental of Rs. 4-12-0. Defendant No. 2 in his written statement said that he was a bona fide tenant and could not be ejected without notice. Defendant No. 1 said that he had no concern with the case and had been wrongly impleaded. Defendant No. 3 said that the tenancy had not been split up

and that as the original tenant was still in possession of a part of the holding, she could not be ejected.

2. The learned Munsif found that there had been a splitting up of the tenancy but that upon the plaint, as framed, no decree for ejectment could be given. It appears that in the plaint the land from which it is sought to eject defendant No. 1 is not described by-metes and bounds. It is merely stated that plot No. 1 consists of a certain area out of the total area of 2 big has 8 cottas. After the evidences, of both sides had been recorded, an application was made, for amendment of the plaint by describing by metes and bounds the parcels from which an ejectments was sought. The learned Munsif found that the statements in the application for amendment were inconsistent with the evidence given in the case. For instance, in respect of plots in which according to the application Ananda and Enait were said to be joint, the evidence showed the exclusive possession of one party alone. It was clear, therefore, that even if he allowed the amendment of the plaint, he could not grant ejectment according to the terms, and so he dismissed the plaintiff's suit for that part of the land which is in schedule ha. We are not concerned with the lands in schedule kha and ga in this case. We need not, therefore, refer to them.

3. In appeal the learned Subordinate Judge found that there had been no splitting up of the tenancy at all. He, therefore, refused to eject the defendants.

4. The plaintiff prefers this second appeal and the only ground of law taken is that upon the facts found the Court of appeal below was bound to draw the inference that there had been a splitting up of the tenancy. Now what the learned Subordinate Judge found is this. He says that there was a division of the land, but he does not say whether each plot was divided into two equal shares or whether some plots were given to one party and some to another party. Again, he says that for the sake of convenience Ananda paid half share of the rent on account of the jote to the plaintiff. But he goes on to say that during certain punia ceremonies Enait paid some rent to the bara laraf that is, to the plaintiff. Again he goes on to say that in a certain roadcess return the plaintiff has described Torap, the predecessor of Ananda, and Dinu, the predecessor of Enait, as his tenants; and again that, in a rent suit brought by the chhota tarnf for their shnre of rents, Mini, the son of Torap, and Enait, the son of Dinu, were both impleaded as tenants. It also appears even in the present case that Enait has been impleaded as a tenant. Upon all these facts, the learned Subordinate Judge has declined to come to the finding that there was a splitting up of the tenancy and I cannot interfere in second appeal. Reliance has been placed, on behalf of the appellants on the following cases: Gobind Chandra Pal v. Hamidull Bhuian 7 C.W.N. 670; Panchanan Banerji v. Raj Kumar Guha 19 C. 610; Bhabatarini Dasi v. Ekabbar Malita 5 C.L.J. 235 : 2 M.L.T. 155 (F.B.) and Sailendra Nath Hitter v. Karali Charan Singh 2 C.L.J. 534. These cases do not really touch the point. They merely show that it is open to a tenant, notwithstanding the terms of the Section 158 of the Bengal Tenancy Act, to hold separate tenancies under co-sharer

landlords in respect of their shares in the holding. If then the tenancy has not been split and the original tenant till remains on the land, there can be no abandonment within the meaning of the Section 87 of the Bengal Tenancy Act. Therefore, the plaintiff cannot eject the defendants. The appeal is dismissed with costs, only one set of costs is allowed to the different defendants.