

(1904) 05 CAL CK 0014

In the Calcutta High Court

Case No : Appeal from Original Decree No. 184 of 1900

Hara Sundari Debya

APPELLANT

Vs

Jogendra Nath Mozumdar and others

RESPONDENT

Date of Decision : 24-05-1904

Acts Referred:

Citation : (1904) 05 CAL CK 0014

Judgement

1. The suit out of which the appeal No. 184 of 1900 arises was brought by Hara Sundari Debya either for a declaration of her title to and to recover possession of two villages, khas Nij Chowra Panchil and khas Jalalpur, with mesne profits which the alleged had been leased to her by a dar-putni lease, dated the 6th Sravan 1303, by the Defendant No. 6, Dina Rath Talukdar, after receiving from her a bonus of Rs. 3,829 or for the recovery from that Defendant of the sum paid by her as bonus with interest thereon amounting to Rs. 56,86-5-3, if the Court should hold that she was not entitled to the relief previously claimed. Defendants Nos. 1 to 5 are the sons of Hari Charan Mozumdar. Hari Charan Mozumdar is said to have granted to Defendant No. 6, on the 9th Ashar 1282, a putni lease of a large number of villages including the two villages in suit on a total rental of Rs. 754-9, the rental for each village being at the same time separately specified. The rental of Chowra Panchil was Rs. 123 and of Jalalpur Rs. 90. Subsequently to her lease in 1303 Plaintiff tried to take possession of the two villages and her servants were resisted by the servants of Defendants Nos. 1 to 5 and hence she was compelled to bring this suit.

2. Defendants Nos. 2 to 5 did not appear to contest the claim of the Plaintiff, Defendant No. 1, Jogendra Nath Mozumdar alias Hajari Mozumdar, appeared. He denied the right of his father Hari Charan to grant a putni lease to the Defendant No. 6 and alleged that he himself had been all along in possession under a maurasi lease granted to him by his grandfather at the time of his namakaran ceremony, which was before the grant of the alleged putni lease to Defendant No. 6. He further pleaded that even if the villages had been granted in putni to Defendant No. 6 that Defendant had forfeited all right to them, as in suits

brought by Hari Charan against him for the rent of those and other villages covered by the putni lease that Defendant had pleaded that he was not bound to pay rent for those villages as he had never been placed in possession of them. That Defendant had rescinded the putni lease so far as those villages were concerned. As a result of the above contention he pleaded that the Plaintiff had obtained no right to the villages under the dar-putni lease which had been granted to her. Defendant No. 6 admitted the execution in his favour of the putni lease by the father of the Defendants Nos. 1 to 5, and the execution by him in favour of the Plaintiff of the dar-putni lease. He also admitted the receipt from her of the bonus. But he contended that he had made over possession of the 2 villages to the Plaintiff and that she had no right of action against him and could not recover from him the sum claimed as damages.

3. The Subordinate Judge held that the putni had been granted by the father of Defendants Nos. 1 to 5 to Defendant No 6 and the dar-putni lease had been granted by Defendant No. 6 to the Plaintiff. He did not believe that any bonus was paid by the Plaintiff when the dar-putni lease was granted. He held that the Defendant No. 1 had entirely failed to prove that any permanent lease of any villages including the two in suit had been granted to him by his grandfather. He held, however, that Defendant No. 6, Dina Nath Talukdar, by refusing to take possession of the villages in suit had so far as they were concerned rescinded the putni lease, and made it voidable at the instance of the legal representatives of his lessor. Jogendra Nath Mozumdar, Defendant No. 1, one of the sons of the lessor Hari Charan Mozumdar, was entitled to avoid and had avoided the lease so far as his share in the villages inherited from his father was concerned. The other heirs, Defendants Nos. 2 to 5, on the other hand by their conduct acquiesced in the continuance of the lease of their shares in the two villages and so far as their shares were concerned the putni remained valid and effectual. Defendant No. 6 could therefore in his opinion grant a valid dar-putni lease of the shares of Defendants Nos. 2 to 5 in the villages in suit, but could not grant a valid lease of the share of Jogendra Nath Mozumdar, He accordingly passed a decree in favour of the Plaintiff for declaration of her title and for recovery of possession of 4/5th of the villages in suit under her right as dar-putnidar and dismissed her claim as to a one-fifth, share. He disallowed the claim to mesne profits and directed that each party should bear their own costs.

4. The Plaintiff has appealed with regard to the 1/5th share in respect of which her claim has been disallowed, while Defendant No. 1 has filed cross-objections in respect of the 4/5th share, with regard to which the suit has been decreed.

5. The case for the Appellants, as argued before us, has been that the Subordinate Judge has erred in holding that the putni lease so far as it covered the land in suit was rescinded by Defendant No. 6 and that in consequence it was voidable at the instance of Defendant No. 1 so far as his share was concerned. It has been contended that the different Courts in the litigation which went on between Hari Charan Mozumdar and Defendant No. 6 for the recovery of the

rents under the putni lease, between the year 1879 and 1888, never went so far as to find that the lease had been rescinded. What, they held was that until the lessor could prove that he had placed the lessee in the possession of the two villages, Chowra Panchin and Jalalpur, he was not entitled to recover from the lessee the rent stipulated for those two villages in the lease. Up to 1295 the lessor throughout the litigation treated the putni lease as an existing contract, and persisted in his right to recover rents under it from the lessee for the villages in suit. The lessee Defendant No. 6 could not take possession at once after the execution of the lease as the lessor had granted an ijara of the two villages to Radha Nath Das at a rental lower than that which under the terms of the putni lease the lessee was bound to pay and in consequence the ijaradar and dar-ijaradar remained in possession till 1295. In 1296, the lessee Dina Nath Talukdar induced the tenants to consent to pay enhanced rents, and he was then able to enter into possession and remained in possession till 1302 when he granted the dar-putni to the Plaintiff. Hari Charan Mozumdar, the lessor, died in 1301 and then Jogendra, Defendant No. 1, commenced the dispute and subsequently dispossessed the Plaintiff.

6. Defendant No. 1 opposes the case advanced for the Plaintiff-Appellant and supports his own cross-objections on the following grounds : It is urged on his behalf that the effect of the judgment of the High Court passed in 1900 in the appeal in the last of the suits brought by Hari Charan Mozumdar against Dina Nath Talukdar for the recovery of the rent stipulated for in the putni was a judicial reconstitution of the putni lease and not merely a disallowance of the rent for the years in suit--that there was a substitution of a new lease for the old and that the putni was reconstituted as a lease of those properties only which were in the possession of the lessee. The lessor therefore lost all right under the putni to the villages in suit and could not create a dar-putni lease which was valid in law in favour of the Plaintiff. The dar-putni lease, it was argued, was a there speculative lease devoid of legal consideration, and it was absurd to suppose that the Plaintiff would have given to Dina Nath Talukdar, Defendant No. 6, a bonus of Rs. 3,829 for the dar-putni lease of the two villages when Dina Nath had only given a bonus of Rs. 1,500 for his putni of all the villages covered by it. It was accordingly contended that the whole claim of the Plaintiff should have been disallowed and that though only Defendant No. 1 had filed the cross-objection still under the provisions of sec. 544, C.P.C, he was entitled to appeal against the whole decree as it proceeded on a ground common to him as well as to Defendants Nos. 2 to 5.

7. We have gone through the evidence adduced in the case and have read and considered the judgments passed in the course of the previous litigation between the parties, and we have come to the conclusion that the arguments relied on by the Appellants are sound and that those advanced by Defendant No. 1, Respondent, are not.

8. The original putni lease granted by Hari Charan Mozumdar to Dina Nath

Talukdar, on the 9th Ashar 1282, was admittedly a perfectly valid transaction. In suits instituted by Hari Charan in 1879 (No. 1 of 1879), in 1881 (No. 17 of 1881) and in 1887 (No. 12 of 1887) against Dina Nath Talukdar for the recovery of the rent due under the putni lease Hari Charan treated the lease as binding in its entirety on the lessee Dina Nath, and so far as we can judge from the judgments filed Dina Nath Talukdar never asserted his right to break up or rescind any part of the lease. On each occasion when he was sued for rent he denied the right of Hari Charan to recover till the termination of the ijara or some other event enabled him as lessee to realise from the villages in suit the rent at which they were leased in the putni lease, and we understand the judgments of this Court in appeal to mean that Plaintiff Hari Charan was not entitled to recover rents from Dina Nath in respect of the villages now in suit until he, Hari Charan, had placed Dina Nath in a position in which he could pay the rent. In the judgment of this Court delivered in the appeal in the suit No. 12 of 1887, we understand the Judges to mean that as under the putni lease a separate rent for each mehal was entered the contract to pay rent under the lease was not indivisible, but that it was possible to ascertain and to relieve the Defendant from liability to pay rent for those mehals in respect of which the lessor had failed to discharge his duty by placing the lessee in possession on fair terms. This did not amount to a judicial reconstitutions of the putni lease. No such relief appears to have been prayed for by the Defendant in that suit, and the judgment and decree amounted to a disallowance of a part of the Plaintiff's claim under the contract without further in any way binding the parties or altering the relations of the parties under the contract.

9. The case which Defendant No. 1 set up in his defence that the two villages with others had been settled by his grandfather with him under a permanent lease when he was a boy at school is not supported by any evidence of any value and we think that the Sub-Judge was right in regarding it as false.

10. There being no right to the villages in suit in any one other person than Hari Charan up to the time of his death and he having in the suits already referred to and in the subsequent suit in 1888 (No. 867 of 1888) all along treated the putni lease as subsisting in its entirety there cannot be said to have been on the part of the lessor any rescission of the putni lease. Nor do we think that the conduct of the lessee in the course of the litigation referred to can be treated as a repudiation or rescission of the lease so far as it covered the villages in suit.

11. The right under the putni lease to the villages in suit continued therefore up to the death of Hari Charan Mozumdar in 1301. Between 1296 and that date Dina Nath and his witnesses have stated that he obtained possession of the villages in suit having come to an arrangement with the tenants, which permitted him to hold the villages at a profit. The Subordinate Judge has disregarded this evidence, but he has not stated his reasons for rejecting it. Clearly between 1295 and 1301 something took place which had the effect of moving both parties to try to obtain possession of the villages. The evidence of Dina Nath and his

witnesses at least affords a motive which seems not unreasonable and there do not, appear to be sufficient grounds for rejecting their evidence.

12. On the death of Hari Nath Mozumdar, his son Jogendra Nath, Defendant No. 1, appears to have tried to assert, his rights, and it is not impossible that, as the Subordinate Judge suggests, Dina Nath may have given the dar-putni to the Plaintiff to secure her assistance. This object does not appear to have been attained for Dina Nath appears to have lost possession and Plaintiff appears not to have gained possession.

13. The putni lease to Defendant, No. 6 remained however as a valid and subsisting contract covering the villages in suit, and under that lease the Defendant No. 6 had power to grant a valid dar-putni lease to the Plaintiff. As both parties admit the delivery and receipt of the bonus there do not appear to be sufficient grounds for the finding of the Sub-Judge that no consideration passed, or for the contention of the Respondent that the lease was a purely speculative one. It seems from the evidence that the Plaintiff had a good and sufficient reason for wishing to take the lease.

14. We find therefore that the putni lease granted to Defendant No. 6 by Hari Charan was a valid contract subsisting in its entirety at the time of the grant of the dar-putni lease to the Plaintiff, that it covered the villages in suit, and that the dar-putni granted by Defendant No. 6 to the Plaintiff covered the whole of the village.

15. The appeal is accordingly decreed and the judgment and decree of the Subordinate Judge so far as they disallow the claim of the Plaintiff to 1/5th of the villages in suit is set aside. The Plaintiff is granted a decree declaring her right under the dar-putni lease to the whole of the villages in suit and to recover possession. We make no order as to mesne profits as it appears that the Plaintiff took the lease after the dispute had arisen between Jogendra and Dina Nath and apparently after Dina Nath had been dispossessed. The cross-objections are disallowed.

16. There was a further cross-objection raised on behalf of Dina Nath that as he had placed the Plaintiff in possession he was entitled to recover costs against her in this suit. As however we are of opinion that he failed to place the Plaintiff in possession we think this cross-objection fails.

17. The appeal is decreed with costs.

18. Appeal from Appellate Decree No. 1120 of 1900 which has been put down for hearing after this appeal arises out of a suit brought by Dina Nath Talukdar to recover rent from Kara Sundari Debya for rent for two kists of 1304 of the mehals Chowra Panchil and Jalalpur. The claim was allowed on the Court of first instance, but disallowed by the Court of Appeal on the ground that the Plaintiff had failed to put Hara Sundari Debya as lessee in possession of the leased villages. The Subordinate Judge has found as a fact that the Plaintiff failed to put

the Defendant in possession and with that finding we could hardly interfere in second appeal, even if our findings in the Appeal No. 184 of 1900 had been different.

19. We think therefore that the appeal must be dismissed as coultided by the findings of fact of the lower Appellate Court. The appeal is dismissed with costs. The cost is decreed against Defendant No. 1. The Defendant No. 6 will bear his own Costs. We assess the hearing fee at Rs. 250 in the appeal from Original Decree No. 184 of 1900.