

(1912) 03 CAL CK 0006
In the Calcutta High Court

Hari Lal Singha and Others

APPELLANT

Vs

Rup Manjori Burmoni and Others

RESPONDENT

Date of Decision : 06-03-1912

Acts Referred:

Citation : 15 Ind. Cas. 137

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

Bench : Division Bench

Judgement

1. This is an appeal on behalf of the defendants in an action in ejectment. The subject-matter of the litigation, a parcel of homestead land, admittedly belonged to one Krishna Mohini Dasi, who died in March, 1908. On the 22nd April 1908, her interest as tenant was purchased by the plaintiff from her brother, Krishna Das. Three days later, the defendants, now appellants, purchased the property from the same person. The plaintiff seeks to eject the defendants on the ground that she has a prior title. The defendants resist her claim on a two-fold ground; namely, first, that the interest of Krishna Mohini was not heritable, and, secondly, that as Krishna Mohini was a woman of ill-fame and an outcast, her brother Krishna Das was not her legal representative. The Courts below have overruled the first contention and have held that the interest of Krishna Mohini was heritable. Upon the second question, they have held that Krishna Das was the brother of Krishna Mohini as allegedly the plaintiff and was consequently the heir-at-law.

2. In the present appeal, it has been argued, in the first place, on behalf of the defendants that the interest of Krishna Mohini was not heritable and that she held it for life. In support of this proposition, reliance has been placed upon the cases of Lekhraj Roy v. Kanhya Singh 3 C. 210 : 4 I.A. 223 and Tulshi Pershad v. Ram Narain Singh 12 C. 117 : 12 I.A. 205. On the strength of these decisions, it has been contended that a grant for an indefinite term is presumably for the life of the grantee and that the onus is upon the plaintiff to establish that the grant in favour of Krishna Mohini was heritable. Now it need not be disputed, as was

ruled by the Judicial Committee in the cases of *Tej Chand v. Sreekanth Ghose* 3 M.I.A. 261 : 6 W.R. 48(P.C.) and *Burdakanth Roy v. Aluk Munjooree Dasiah* 4 M.I.A. 321, that a lease for an indefinite term is not necessarily heritable. At the same time, it must be remembered that it is open to a Court to hold, from the circumstances of a particular case, that the lease-hold interest was intended to be heritable. It was pointed out by this Court in the case of *Kishori Lal Roy Chowdhury v. Krishna Kamini Chowdhurani* 37 C. 377 : 5 Ind. Cas. 500 : 11 C.L.J. 401, that where there is a lease for building and residential purposes, in the absence of any intention to the contrary indicated either in the terms of the grant or in the nature of the tenancy, the lease-hold interest is heritable, and the tenancy does not determine by the death of the lessee but vests in his legal representatives who are entitled to give or to receive the usual notices to quit. In the case before us, it appears from the evidence that Krishna Mohini held under a registered kabuliyat which has not been produced in evidence; it is presumably in the custody of the superior landlords who, it has been found, have taken the side of the defendants appellants. No steps appear to have been taken for the production of that instrument and it is consequently not unfair to hold that if the deed supported the theory that the grant was personal and not heritable, it would have been produced. In addition to this circumstance, we have the farther fact that both the plaintiff and the defendants have treated the interest as heritable. No doubt, as was pointed out by the learned Vakil for the appellants, upon the authority of the decisions of this Court in the case of *Rup Chand Ghosh v. Sarveswar Chandra Chandra* 33 C. 915 : 10 C.W.N. 747 : 3 C.L.J. 629, which was accepted as good law in *Bipin Behari v. Tincowri* 9 Ind. Cas. 374 : 3 C.L.J. 271 : 15 C.W.N. 976, such conduct on the part of the defendants does not create an estoppel, but it is open to a Court to hold that the conduct is evidence that the interest, accepted as heritable by the defendant, was in reality of that character; and this is the view adopted by the Courts below. We must, therefore, hold that the finding of the Courts below that the interest of Krishna Mohini was heritable cannot be successfully challenged in second appeal.

3. It has been argued, in the second place, by the learned Vakil for the appellants that even if the lease-hold interest was heritable, Krishna Das was not the heir-at-law of his sister, and in this connection, reference has been made to the case of *Bhut Nath Mondol v. The Secretary of State for India* 10 C.W.N. 1085 to show that an undegraded relation of a degraded woman is not her heir-at-law. It is not necessary for the purpose of the present case to discuss whether this proposition is well founded. It is sufficient to observe that, as is shown by an examination of the authorities in the order of reference to the Full Bench in the case of *Chatu Kurmi v. Rajaram Tewari* 3 Ind. Cas. 374 : 11 C.L.J. 124, there is some divergence of judicial opinion upon this point. In the case before us, however, it is clear that this point was not taken in the Courts below, and, it is undoubtedly not taken in the grounds of appeal here. The decision of the question involves the determination of a disputed question of fact, namely, whether Krishna Das was degraded in the same way as his sister was. We are of

opinion, therefore, that the question ought not to be allowed to be raised at this stage, specially in view of the fact that the brother has been treated by both the parties as the heir-at-law of his sister in the course of their respective transactions.

4. The result is that both the contentions urged by the appellants fail and the appeal is dismissed with costs.