
(1916) 05 CAL CK 0037
In the Calcutta High Court

Jadab Sardar and Others

APPELLANT

Vs

Gobinda Chandra Mondal and Others

RESPONDENT

Date of Decision : 25-05-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 49, 85

Citation : 34 Ind. Cas. 912

Hon'ble Judges : Lancelot Sanderson, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—In this case I think that the appeal should be dismissed inspite of the argument which Dr. Dwarka Nath Mitter has addressed to us. The plaintiffs obtained a settlement of the land from the admitted landlord in April 1911. Defendants Nos. 1 and 2 who are appealing to this Court obtained their title to the interest, which they now have, under defendant No. 4. Defendant No. 4 was a person who had the original right of occupancy and he sublet it to defendants Nos. 1 and 2; the plaintiffs are third persons; no objection can be taken to the proceeding by defendant No. 4 in subletting which created an interest in defendants Nos. 1 and 2—the interest of an under-raiyat. Then defendant No. 4 sold his right as occupancy raiyat to defendants Nos. 1 and 2. It turns out that the occupancy right was that of a non-transferable occupancy holding which the defendant No. 4 had no power to assign to defendants Nos. 1 and 2, and Dr. Dwarka Nath Mitter does not claim on behalf of defendants Nos. 1 and 2 as transferees under that sale, but he claims on behalf of them under the sub-letting, whereby he says they became under-raiyats; and that, inasmuch as they became under-raiyats, they were entitled to notice u/s 49 of the Bengal Tenancy Act, and that such notice not having been given the present suit would not lie as it is a suit which comes within Section 49, being a suit by the landlord claiming to eject an undev-raiyat. I do not think that that argument can be maintained, for two reasons. First of all, I do not think that, after the sale by defendant No. 4 of his interest to defendants Nos. 1 and 2, they were in the position of under raiyats, because defendant No. 4 having transferred or having

purported to transfer his interest to defendants Nos. 1 and 2 left the land and disappeared altogether. The result of that transaction was equivalent to abandonment by defendant No. 4 of the whole of his interest. Then the position was that there was the landlord and the defendants Nos. 1 and 2, and there was nobody between them. As it was put during the course of the argument the landlord and the defendants Nos. 1 and 2 were face to face. Those are the facts of the case. In spite of Dr. Dwarka Nath Mitter's ingenious argument I cannot understand how, after that transaction had taken place, defendants Nos. 1 and 2 any longer occupied the position of under-raiyats and I think that is sufficient reason to justify the dismissal of the appeal.

2. But I think there is also another reason, viz., that according to the decision in the case of *Badan Chandra Das v. Rajeswari Debya* 2 C.L.J. 570 Mr. Justice Ghose, who delivered the judgment of the Court, said at page 572, "Section 49 of the Bengal Tenancy Act which has been referred to has no application to this case. That section refers to a suit in ejectment brought by the immediate landlord of the under-raiyat." Now, if Dr. Dwarka Nath Mitter's argument upon the other point is to be given effect to, namely, that the intermediate tenure must be taken as being abandoned for all other purposes except for the protection of the under-raiyati, then this action is not brought by the raiyat who was the immediate landlord of the under-raiyat, and that is an additional reason why the notice specified by Section 49 need not be given.

3. For these two reasons I think that the judgments, which according to the learned Vakil for the appellants, have been consistently against them, are right judgments, and this appeal should be dismissed with costs.

Mookerjee, J.

4. I agree that the decree made by Mr. Justice Fletcher, in affirmance of the concurrent decisions of the Courts below, cannot be successfully assailed.

5. To bring into relief the ingenious argument addressed to us by Dr. Dwarka Nath Mitter I shall state the facts of the case stripped of superfluous details. X was the tenure-holder in respect of the disputed land. Y held under him a non-transferable raiyati holding. Z was the under-raiyat under Y. Y then transferred his interest to Z, and disappeared from the land; this transfer was clearly-inoperative against X. X subsequently granted an under-tenure to A, who now sues to eject Z. The contention of Z is that he is entitled to the notice prescribed by Section 49, Clause (b), of the Bengal Tenancy Act. This defence has been overruled by all the Courts.

6. Clause (b) of Section 49 provides that An under-raiyat shall not be liable to be ejected by his landlord, except, when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord." To entitle Z to claim the protection of Section 49, he has to establish that this is a suit for ejectment by his landlord. Now Section 4, Clause (c), which specifies the different classes of tenants under

the Bengal Tenancy Act, shows that an under-raiyat is a tenant holding, whether immediately or mediately, under a raiyat. Consequently the landlord of an under-raiyat is a raiyat, in other words Z must establish that he holds under a raiyat. This he cannot do, for in the events which have happened he holds now under a tenure-holder. It is thus plain that he is not entitled to the benefit of Section 49. This view is in accord with that taken in the cases of *Nilkanta Chaki v. Ghatoo Sheikh* 4 C.W.N. 667 and *Badan Chandra Das v. Rajeswari Debya* 2 C.L.J. 570.

7. But it has been contended on behalf of the appellant that he is not a trespasser and his tenancy must be terminated by a notice to quit before he can be sued in ejectment. In support of this position reference has been made to an observation of Jenkins, C.J., in the case of *Lal Mahomed Sarkar v. Jagir Sheikh Mallik* 2 Ind. Cas. 654 : 13 C.W.N. 913 where it was said, in circumstances entirely different from those of the case before us, that a holding may cease to exist except for one purpose, namely, for the benefit of the under-raiyat. Reference has also been made to the decisions in *Amirullah Mahomed v. Nazir Mahomed* 31 C. 932 and *Amirullah Mahomed v. Nazir Mahomed* 34 C. 104 : 3 C.L.J. 155. The appellant has further invoked the assistance of the principle deducible from *Ram Udar Singh v. William Cox* 27 Ind. Cas. 564 : 19 C.W.N. 268, that a person cannot, by surrender, do what he could not achieve by assignment. These cases, however, are all clearly distinguishable. Here we have neither an assignment nor a surrender, but a sale accompanied by abandonment. Y transferred his raiyati holding to Z, although he was not competent to do so. He then disappeared from the land and made no provision for the payment of rent to X. The consequence in law was that the holding was abandoned, and the tenancy ceased to exist. X was thereupon brought into direct contact with Z. The sale by Y, to which X was not a party, did not in any way affect his rights as tenure-holder; what were those rights then P Clause (1) of Section 85 of the Bengal Tenancy Act provides "that if a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent." Here the oral sublease by Y in favour of Z was not made with the consent of X, and consequently was not valid as against X. This conclusion completely negatives the contention that although the sub-lease by Y in favour of Z, which is the root of the title of Z, is not valid as against X, yet X is bound to treat Z as an under-raiyat and is under an obligation to give him the requisite notice u/s 49. From whatever point of view the case is examined, it is thus plain that X, or A who has derived title from him, is entitled to eject Z without prior notice u/s 49.