
(1972) 02 CAL CK 0030
In the Calcutta High Court
Case No : A.F.A.D. No. 1041 of 1959

Jahar Lal Manna

APPELLANT

Vs

Sri Tarakeswar Jew's Shebait and Others

RESPONDENT

Date of Decision : 04-02-1972

Acts Referred:

Bengal Tenancy Act, 1885 — Article 3

Citation : AIR 1972 Cal 376 : (1973) 1 ILR (Cal) 53

Hon'ble Judges : Sankar Prasad Mitra, J;S.K. Datta, J

Bench : Division Bench

Advocate : C.C. Ganguly and Gouri Prasad Mukherjee, for the Appellant;

Final Decision : Allowed

Judgement

Sankar Prasad Mtttra, J.—This is a second appeal from the Judgment of the Additional Subordinate judge, Hooghly, delivered on the 4th January, 1958. The dispute relates to about 6.89 acres of land under khatian No. 238 in Mouza Chowtara, P.S. Dhaniakhali in the district of Hooghly. One Bholanath Jana was a tenant in respect of this land under Satis Giri, the Mohunt of the Hrishikesh Asram of Tarakeswar. On the 22nd December, 1932 Bholanath sold some portions of this land to the defendants Nos. 7 and 8. The defendants Nos. 3 to 6 are the heirs of Bholanath and the defendant No. 1 is the present landlord.

2. In 1937, the landlord filed a rent suit against the defendants Nos. 3 to 8. This was Rent Suit No. 999 of 1937. The suit was decreed on February 2, 1938. Before this decree was put into execution, the plaintiff purchased the suit plots from the defendants Nos. 7 and 8 with notice to the landlord. The date of plaintiff's purchase is , the 19th December, 1938.

3. Thereafter on the 12th March, 1941 in the Rent Execution Case No. 763 of 1940 the suit lands were put to sale by auction. In this sale the defendant No. 1 became the auction-purchaser.

4. Pursuant to this auction-purchase, delivery of possession of the suit lands was

given to the defendant No. 1 on the 8th December, 1941. The defendant No. 1 obtained possession through Court, and thereafter settled the suit lands to the defendant No. 2.

5. The plaintiff, who is the appellant before us, on the 28th September, 1951, filed Title Suit No. 230 of 1951 in the Munsifs Court at Chinsurah. In the plaint, inter alia, declaration of title and recovery of possession were claimed.

6. On the 24th April, 1954 the Second Munsif of Chinsurah disposed of this title suit. He held that "the plaintiffs title to the suit lands acquired by Ext. 3 has remained unaffected by the sale in execution of the decree in Rent Suit No. 999 of 1937 of the 1st Court of Munsif, Hooghly". But he dismissed the suit on the ground of limitation. According to him, to a suit of this nature Article 3 in Schedule III to the Bengal Tenancy Act, 1885 applies. This Article is as follows :

Description of suit. Period of limitation. Time from which period begins to run.

To recover possession of land claimed by the plaintiff as a raiyat or an under-raiyat.

Two years. The date of dispossession.

7. The plaintiff preferred an appeal which was marked as Title Appeal No. 187 of 1954. On the 4th February, 1958, the Additional Subordinate Judge of Hooghly dismissed the appeal. The Appellate Judge did not disturb the Munsifs finding on the question of title. He agreed with him on the question of limitation. He was also of the view that Article 3 in Schedule III to the Bengal Tenancy Act, 1885 stood in the way of the plaintiffs obtaining a decree.

8. On the 29th April, 1958 the present appeal was filed. On May 5, 1965 P. N. Mookerjee, J. referred the appeal to a Division Bench as it raised important Question of law.

9. The only point that arises for Consideration is whether the plaintiffs suit for declaration of title and recovery of possession would be governed by Article 3 in Schedule III to the Bengal Tenancy Act, 1885 or by the ordinary law of limitation, in other words, whether the period of limitation would be two years or twelve years. If the period of limitation is twelve years the suit was instituted within time.

10. Now, Article 3 in Schedule III to the Bengal Tenancy Act, 1885 applies to a suit by a raiyat or an under-raiyat who is seeking to recover possession. Obviously the Article contemplates that the raiyat or the under-raiyat was in possession : he has been dispossessed : and he is trying to recover possession. There was a difference of Opinion in our Court as to the nature of dispossession which Article 3 envisaged. One view was that the dispossession must be by the landlord himself. The other view was that any form of dispossession was enough to bring the suit within the scope of Article 3. Fortunately for us, the controversy has now been settled by a Full Bench decision of our Court in the case Kubir

Malla Vs. On the death of Titu Bibi her heir Manik Mallik and Others, . Our Full Bench is of the view that since Schedule III, Article 3 finds place in a statute which, according to its preamble, is intended "to amend and consolidate enactments relating to the law of landlord and tenant", the word "dispossess" in the third column of this Article means dispossession by the landlord or by an authorised agent of the landlord acting within the scope of his authority : the mere fact that the landlord brought the holding to sale does not justify an inference of implied undertaking by him to recognise the third party auction-purchaser as his tenant in the absence of any evidence to that effect : further under the present law the recognition of the purchaser as a tenant does not depend upon any "implied offer" by the landlord to recognise him as a tenant : the purchaser's right is now a statutory right as provided in Section 26-C which can be enforced even against the will of the landlord : hence if in the execution of a decree for rent obtained against a tenant by the landlord a third party purchases the right, title and interest of the defaulting tenant or the holding itself and dispossesses the original tenant the dispossession is not to be deemed to be dispossession by or on behalf of the landlord so as to attract the special limitation provided in Schedule III, Article 3.

11. A Full Bench of the Patna High Court in Gajadhar Rai Vs. Ram Charan Gope and Others, has also taken the same view. The Patna High Court's Full Bench has held that the special period of limitation prescribed by Article 3 of Schedule III to the Bengal Tenancy Act does not apply to a case of dispossession by the landlord as purchaser of the holding in execution of a decree for rent.

12. The Patna High Court's decision is more apposite to the facts of our case. The position is that unless the dispossession complained of is a dispossession by the landlord in his capacity as the landlord. Article 3 of Schedule III to the Bengal Tenancy Act is not attracted. From this point of view the judgments of the Courts below with respect to limitation cannot be sustained. In the instant case there was a purchase by the defendant No. 1 who was the landlord in Rent Execution Case No. 763 of 1940 but the landlord did not purchase as a landlord but as any other auction-purchaser in a rent execution sale. On these facts, the special period of limitation cannot apply to the plaintiff's Title Suit No. 230 of 1951.

13. We, therefore, allow the appeal and set aside the findings of the Court below in regard to limitation as also the order of the Court below dismissing the suit. The plaintiff's suit is decreed as prayed. There will be no order as to costs of this appeal.

S.K. Datta, J.

14. I agree.