
(1917) 02 PAT CK 0040
In the Patna High Court

Janki Sahu and Others

APPELLANT

Vs

Thakur Run Bahadur Singh and Others

RESPONDENT

Date of Decision : 09-02-1917

Acts Referred:

Citation : AIR 1917 Patna 578 : 39 Ind. Cas. 398

Hon'ble Judges : Roe, J;Chapman, J

Bench : Division Bench

Judgement

Chapman, J.—This appeal arises out of a suit by (sic) for possession of a holding which the defendants second party have transferred to the defendants first party. The suit was decreed in the first Court and the decision was upheld in appeal.

2. The first ground taken in appeal is that there was no transfer and that the arrangement between the defendants second party and defendants first party amounted only to an usufructuary mortgage. The learned District Judge, however, has held that the usufructuary mortgage was a disguised sale and he has given good reasons for so holding. He further points out that the holding has been obviously abandoned by the tenants, who have done nothing to defend their supposed title.

3. The next ground taken in appeal is that the learned District Judge should have held that the landlord recognised the transfer. The appellants have attempted to rely upon a receipt of the year 1319 granted by the landlord's gomashtha, upon which a signature appears which might be read to be the name of the landlord. No reference to this receipt is made either by the first Court or by the Court of first appeal or in the memorandum of appeal to this Court. There was no evidence that this signature was the signature of the landlord and even if it were a genuine signature, we would not be disposed to interfere in second appeal upon the ground that the Courts below overlooked a piece of evidence which was not brought to their notice by the parties.

4. The next contention is that the learned District Judge should have held that

the landlord was bound by the receipts granted by his gomashta which recognised the transfer. The appellant has relied upon a judgment of the Calcutta High Court in the case of *Sudaman Jamadar v. Behari Mahton* 10 Ind. Cas. 456 : 15 C.W.N. 953. I am not, however, prepared to assent to what was said in that judgment to the effect that the burden of proving the extent of the gomashta's authority in such cases is on the landlord. A gomashta is ordinarily an agent with an authority of a limited kind and a person dealing with such an agent is bound to assure himself that the limits of the agent's authority are not exceeded.

5. This principle was applied by Council in the case of the *Ru (sic) Bank v. Li Yau Sam* (1910) A.C. 174 at p. 184 : 79 L.J.P.C. 60 : 101 L.T. 689 : 26 T.L.R. 203, where the agent was the permanent manager of (sic) ment of a Bank. Lord (sic) judgment on behalf of the Privy Council states the rule in the following terms:

If the agent be held out as having only a limited authority to do on behalf of his principal acts of a particular class, then the principal is not bound by an act done outside that authority, even though it be an act of that particular class, because, the authority being thus represented to be limited, the party prejudiced has notice, and should ascertain whether or not the act is authorised.

6. In the present case the gomashta was held out as having only a limited authority to give receipts on behalf of the landlord. The authority was represented to be limited and the transferee should have ascertained whether or not the recognition of his transfer by the gomashta was authorised.

7. A similar conclusion was come to by this Court in the case of *Wyatt v. Sheo Gobind Sahu* 36 Ind. Cas. 777 : 1 P.L.J. 414.

8. In order to rely upon a receipt granted by a landlord's gomashta as evidence of recognition by the landlord of a transfer of a holding, it is necessary for the transferee to show that the gomashta's duties actually or ostensibly included at least some of the duties of management. It is not suggested that there was any such evidence in this case. Ordinarily the duties of the gomashta are merely the collection of rents, and the granting of receipts for rents paid. In the absence of any evidence that he was actually or ostensibly vested with wider authority, the presumption would be that the granting of receipts by him would not be binding upon the landlord as a recognition of a transfer. The case, in my opinion, was rightly decided. I dismiss the appeal with costs.

Roe, J.

9. I agree. I would only add that the suggestion that it should be presumed until the contrary is proved that a gomashta has power to recognise transfers on behalf of the landlord, loses sight of the fact that the right to veto such transfers is not only one highly prized by the landlord but one from which a very considerable source of income may be derived. It is idle to suppose that the landlord would ordinarily delegate to a gomashta power to sanction transfers, with the inevitable result that the salami would be paid to the gomashta instead

of to the landlord.