

(1943) 03 CAL CK 0002
In the Calcutta High Court

Joy Gopal Singha and Others

APPELLANT

Vs

Uday Chand Maharajadhiraj Bahadur

RESPONDENT

Date of Decision : 01-03-1943

Acts Referred:

Bengal Tenancy Act, 1885 — Section 168A
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1944 Cal 282

Judgement

1. This appeal is on behalf of the judgment-debtors and it is directed against an appellate Order of Mr. Simpson, District Judge of Hooghly, dated 8th December 1941, reversing a decision of the Subordinate Judge, First Court of that place made in a proceeding u/s 47, Civil P.C. The facts in controversy lie within a short compass and may be stated as follows: The appellants held a patni under the Maharajadhiraj of Burdwan who is respondent before us. The respondent instituted a suit for recovery of arrears of rent due in respect of the patni, being Rent Suit No. 2 of 1939, in the Court of the First Subordinate Judge of Hooghly and got a decree. Before the institution of the suit the patni was sold under Regn. 8 of 1819 and purchased by the Maharajadhiraj himself and the rent suit was for recovery of antecedent balances as well as unrealised portion of the dues for which the patni was sold. The decree-holder got the decree transferred to the Court of the Subordinate Judge at Monghyr for the purpose of proceeding against other immovable properties of the judgment-debtors. Upon this the judgment-debtors presented an application to the Hooghly Court u/s 47, Civil P.C. praying that the certificate might be recalled from the Monghyr Court on the ground that u/s 168A, Ben. Ten. Act, the landlord decree-holder was incapable of proceeding against any other property moveable or immovable of the judgment-debtors. This contention was accepted by the Subordinate Judge who dismissed the decree-holder's application for execution. On appeal the judgment was reversed and it is against this decision of the appellate Court that the present second appeal has been preferred.

2. The learned District Judge who heard the appeal based his decision on two

grounds. In the first place he held that as the patni was sold under Regn. 8 of 1819 prior to the institution of the suit the tenancy had expired so far as the tenant was concerned and consequently the case was governed by the proviso attached to Section 168A (1), Ben. Ten. Act. In the second place it was held by the learned District Judge that Section 168A, Ben. Ten. Act, was ultra vires of the Provincial Legislature and was an invalid piece of legislation.

3. So far as the second ground is concerned it has now been held by this Court in more cases than one that Section 168A, Ben. Ten. Act, is not ultra vires of the Legislature and that it does not contravene the provisions of any existing Indian law: Satish Chandra Hui and Others Vs. Sudhir Krishna Ghosh and Others, , Satish Chandra Bandapadhya Vs. Bishnupada Pal and Others, and Sree Sreejut Maharaja Sir Bir Bikram Kishore Manikya Bahadur Vs. Tafazzal Hossain and Others,

4. The District Judge is also not quite correct in saying that it is enough for the purpose of attracting the operation of the proviso to Section 168A (1), Ben. Ten. Act, that the tenure was sold and passed on to a person or persons other than the judgment-debtors at the time when the application for execution was made. What the Legislature contemplates is that the tenancy itself must be extinguished or came to an end and it is not enough that there was a mere change of hands. In the present case, however, the landlord being himself the purchaser at the patni sale a question of merger would arise and if there was a merger the tenancy must be deemed to be extinguished and the case would come within the purview of the proviso. We agree with Mr. Chakravarti that Section 111 (d), T. P. Act, may not in terms apply to a case where the tenancy was created prior to the passing of the Transfer of Property Act but the general law of merger undoubtedly applies. It is not disputed that in the present case the two interests were co-extensive and vested in the same person in the same right. Prima facie therefore there would be merger unless it is proved that the intention of the holder was to keep the two interests separate. The question however was not approached from this standpoint in any of the Courts below and it would be necessary to consider the conduct of the parties for the purpose of arriving at a decision as to what the intention of the holder really was. We think it proper in these circumstances that the matter should go back in Order that this point and this point alone may be investigated. The lower Court will first consider the point as to whether the tenancy was created before or after the passing of the Transfer of Property Act and whether or not the provisions of Section 111 (d) are at all attracted to the facts of the present case. If the provisions of Section 111 (d) apply there would be a merger ipso jure and it must be held that as soon as the subordinate and the superior interests were united in the same person there was a coalescence of the two interests and the tenancy right was totally extinguished within the meaning of the proviso to Section 168A (1), Ben. Ten. Act. If, on the other hand, the Court is of opinion that the provisions of Section 111 (d), T. P. Act, do not apply to the facts of this case even then the general principle of merger will apply and the Court will look to the conduct of the parties

for the purpose of deciding as to whether in fact the landlord intended to keep the two interests separate. Ordinarily when the landlord purchases a tenancy in execution of a rent decree or in a summary sale under the patni regulation he makes the land khas, that is to say, treats it as belonging to him in proprietary right, but either side may, if he likes, adduce evidence for the purpose of showing what exactly the intention of the landlord purchaser was in the present case.

5. The result, therefore, is that we allow this appeal to this extent and send the case back in Order that the question of merger may be decided in the light of the observations made above. If the Court finds that there was a merger, the application of the judgment-debtors will be dismissed and the landlord would be at liberty to proceed against other properties of the judgment-debtors. The lower appellate Court can take additional evidence itself or direct the trial Court to do so. We make no Order as to costs in this appeal. Leave to appeal to the Federal Court u/s 205, Government of India Act, 1935, is granted.