
(1968) 03 CAL CK 0027
In the Calcutta High Court
Case No : S.A. No. 1009 of 1962

Jyotish Chandra Mukherjee APPELLANT
Vs
Parijat Devi RESPONDENT

Date of Decision : 21-03-1968

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 2, 49, 52, 6(1), 6(2)

Citation : (1969) 1 ILR (Cal) 508

Hon'ble Judges : P.N. Mookerjee, J;A.K. Dutt, J

Bench : Division Bench

Advocate : Murari Mohan Dutt and Ganendra Narayan Roy, for the Appellant;
Jitendra Kumar Sengupta and Asutosh Ganguly, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—This appeal is by the Plaintiff and it arises out of a suit for declaration of the Plaintiff's tenancy right in the suit property which is a tank and for a declaration that the R.S. record in respect of the same is erroneous and for confirmation of the Plaintiff's possession in the suit property and permanent injunction, restraining the Defendant from interfering with the possession of the Plaintiff in the suit property.

2. The suit tank is known by the name of Gopal Dighi. It is recorded in C.S. khatian No. 2032 as C.S. plot No. 4060 mouza Baoinchi.

3. According to the Plaintiff he was a lessee under the Defendant, who was the owner of the said tank, in respect of the, same and was in possession thereof by rearing and catching fish and also by using the banks thereof. The Plaintiff in proper of his claim of tenancy relied, inter alia, upon a kabuliyat for nine years reciting a rental of Rs. 50 per year and sentencing the period of the lease as nine years commencing from Jaistha 22, 1358 B.S. The Plaintiff's further case was that, under the West Bengal Estates Acquisition Act, the Defendant's superior interest had vested in the State of West Bengal and the Plaintiff had become a

direct tenant under the State in respect of the disputed tank.

4. The defence was that the Plaintiff had only a jalkar right in the disputed tank at a rental of Rs. 50 per year and that the same had been surrendered and possession had been given over to the Defendant in the year 1360 B.S., and since that date the Defendant was in khas possession of the disputed tank and that, accordingly, the Plaintiff was entitled to no relief in the instant suit.

5. The learned trial Judge accepted the defence in full and; dismissed the Plaintiff's suit finding, inter alia, against the Plaintiff on the question of possession also and accepting, inter alia, the defence case of surrender of the Plaintiff's right or interest in the year 1360 B.S.

6. On appeal, the above findings of the learned trial Judge on the question of possession and surrender were reversed by the learned Additional District Judge, who held that the above story of surrender had not been proved and the Defendant had not been able to show that she obtained possession of the disputed tank from the Plaintiff in or about the year 1360 B.S., the result being that the Plaintiff's story of possession, even after 1360 B.S. and upto the time of institution of the present suit and thereafter too, was accepted by the learned Additional District Judge.

7. The learned Additional District Judge, however, dismissed the Plaintiff's appeal and affirmed the decree of dismissal of the Plaintiff's suit by the learned trial Judge inspite of the above findings in the Plaintiff's favour upon the view that the Defendant was not an intermediary and, accordingly, her interest had not vested in the state and the Plaintiff could claim no rights u/s 6(2), proviso, of the West Bengal Estates Acquisition Act. It is against this appellate decision that the present appeal has been filed by the Plaintiff.

8. The short point before us is whether the Defendant was an intermediary. On this point, the learned Additional District Judge appears to have confined himself only to the main definition of intermediary as appearing in Section 2(i) without reference to the effect of Section 52 of the Act and the relevant notification u/s 49, extending or bringing into force the said Section 52, at the relevant time. It appears from the settlement records, as finally published, so far as the Defendant is concerned, that she is a raiyat. It appears further that, under the said notification u/s 49, Section 52 was brought into force and was in force at the material time with the result that the Defendant, if a raiyat, as recorded in the settlement records, would be in the position of an intermediary by virtue of the said section and her interest would vest in the State immediately attracting Section 6(2) of the Act to the instant case. If Section 6(2) applies, then under the proviso thereof the Plaintiff, who being admittedly the holder of a jalkar right under the Defendant, which includes on admission of the parties here the right of pisciculture and right of fishing, would be the holder or lessee of a tank fishery within the meaning of the said proviso in view of the definition of tank fishery, in the explanation annexed to Section 6(1)(e); in other words, if the Defendant be

a raiyat, as recorded in the settlement records, she would be an intermediary for purposes of Section 52, and her interest vesting in the State, the Plaintiff, in the facts of this case, would be entitled to have a declaration that he has become a direct lessee under the State in respect of the above tank fishery, namely, the right of pisciculture and the right of fishing in the disputed tank or, in other words, a holder of the same directly under the State.

9. In answer to this, Mr. Sengupta, appearing for the Defendant Respondent, submitted first that the Defendant, even if she was a raiyat, would be on the footing that the Plaintiff was the holder merely of a jalkar, a raiyat in khas possession in respect of the disputed tank and, accordingly, her interest will not vest in the State as that of an intermediary.

10. Even assuming, however, that the Defendant can be regarded as a raiyat in khas possession, it will be difficult in our opinion to hold that raiyats in khas possession are excluded from the mischief or operation of Section 52. The section is comprehensive enough to include all raiyats as intermediaries, whether in khas possession or otherwise. This, indeed, was the view of this Court as expressed in *Bhutnath Das and Others Vs. State of West Bengal and Others*, , and on the Statute, as it stands, we do not find any reason to take a different view in the matter. If, therefore, the Defendant be a raiyat, as recorded in the settlement records, the Plaintiff will be entitled to a declaration that he, as the holder of the jalkar, that is, the right of pisciculture and fishing in the disputed tank, will be the holder or lessee of a tank fishery for purposes of Section 6(2), proviso, and will be entitled to a declaration that he was such a lessee under the State directly and to reliefs on that footing in the shape of confirmation of possession and injunction.

11. It appears, however, that this question, whether the Defendant is a raiyat, was not specifically argued before any of the two Courts below and, for purposes of this case, a decision on the point is necessary. The settlement records, no doubt, raise a presumption in favour of the Plaintiff and against the Defendant on the point, but that presumption is rebuttable and the Defendant must have an opportunity of rebutting the same.

12. We would, accordingly, allow this appeal, set aside the decision of the learned Additional District Judge and send the matter back to the learned District Judge to whom the other proceedings (vide the connected Civil Revision Case No. 487 of 1961) is also being remanded, for a finding whether the Defendant's status is really that of a raiyat as recorded in the settlement khatian. In case she is found to be such a raiyat, the Plaintiff's suit would be decreed by giving the Plaintiff a declaration that he, as the lessee of the jalkar or the right of pisciculture and fishing, as noted above, would be holding as such lessee directly under the State in accordance with law. If, on the other hand, the finding be that the Defendant was not a raiyat, the Plaintiff's claim for a declaration as above would be dismissed and the Court will consider only the question whether, in the circumstances, the Plaintiff will be entitled to any relief by way of declaration or

otherwise against the Defendant on that finding.

13. The appeal is allowed as above and the case is sent back to the learned District Judge for due consideration and final disposal in accordance with law in the light of the observations made in this judgment.

14. The parties, of course, will be entitled to adduce evidence and counter-evidence in accordance with law on the question of the status of the Defendant, which will be the principal point for consideration in the further hearing before the Court of Appeal below.

15. Costs of this appeal will abide the final result of the suit.

A.K. Dutt, J.

16. I agree.