
(1980) 04 CAL CK 0022
In the Calcutta High Court
Case No : A.F.A.D. No. 1055 of 1960

Kissori Lal Nag and Others

APPELLANT

Vs

Tinkari Chandra Chandra

RESPONDENT

Date of Decision : 08-04-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
West Bengal Estates Acquisition Act, 1953 — Section 6(1)

Citation : AIR 1980 Cal 204

Hon'ble Judges : B.N. Maitra, J

Bench : Single Bench

Advocate : Aditya Narain Roy and Binode Behari Giri, for the Appellant; Murari Mohan Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Maitra, J.—The plaintiff has alleged that he is the owner of the disputed tank fishery. The defendants are tenants at will only in respect to the Jalkar Jama in that tank excluding its banks. They have no right to the sub-soil. He wants to rear fish in that tank. The defendants did not pay any rent regarding that Jalkar from 1361 B. S. at the rate of Rs. 4/- per year. The tenancy was determined by a notice to quit. But the defendants did not give up that Jalkar right. Hence the suit for ejectment, for recovery of arrears of rent and also for recovery of mesne profits.

2. The defendants filed a written statement denying the plaintiff's allegations. The defence is that the suit is not maintainable and the same is time-barred. The landlord's right of the plaintiff vested in the State and hence they have become direct tenants under the State of West Bengal. They are not defaulters. They have no Jalkar right but they are tenants with respect to the tank along with the banks and they are occupancy raiyats.

3. The learned Munsif stated that the plaintiff would only get the arrears of rent at the rate of Rs. 4/- per year with interest at the rate of 6 1/2 per cent per

annum. The claim for recovery of possession was rejected. The suit was decreed in part. No costs were ordered.

4. The plaintiff filed an appeal. The learned Subordinate Judge stated that the Jalkar right did not vest in the State of West Bengal. The plaintiff could retain the tank fishery in question. So he allowed the prayer for ejectment. He further held that the plaintiff would get the arrears of rent from 1361 B. S. to 1363 B. S. together with interest at the rate of 6 1/2 per cent per annum. He also allowed the prayer for mesne profits. Hence this appeal by the defendants.

5. It has been contended on behalf of the appellants that the notice to quit is invalid in law. The defendants' tenancy is a non-agricultural one. It is not an agricultural tenancy within the meaning of the provisions of Section 106 of the Transfer of Property Act. So 15 days' notice is required. The plaintiff gave them six months' notice. Hence the Court must hold that the notice is invalid in law. It has been further stated that the clear case in the plaint is that the defendants are tenants. The plaintiff-respondent cannot be permitted to say now that he is a licensee. The plaintiff is bound by his own pleading. The plaintiff's interest had vested in the State and the defendants have become direct tenants under the Government of West Bengal. The appeal must be allowed.

6. There is no whisper in the written statement that the notice is defective or the alleged tenancy of the defendants was not determined by a proper notice to quit. So in the absence of any pleading issue in this respect, the learned Munsif as well as the learned Subordinate Judge fell into an evident error in discussing this matter. Hence this point need not be dilated upon any further.

7. In the well-known case of *The State of West Bengal Vs. Shebaita of Iswar Sri Saradia Thakurani and Others*, and 2100 it has been stated that where a tank fishery is possessed by some persons only to catch fish therefrom on payment of a fixed sum, the arrangement does not constitute a lease within the meaning of the proviso to Sub-section (2) of Section 6 of the West Bengal Estates Acquisition Act, 1953. The owner of the property becomes a direct tenant under the State according to the provisions of Section 6(2) of the Act. This Supreme Court decision was followed in the case of *Ahindra Nath v. Manmatha Nath* reported in (1973) 77 CWN 129 (SB). It has been stated by the Special Bench that mere grant of rearing and catching fish, that is, the right of pisciculture given by a kabuliyat, cannot amount to a lease. It is a mere licence and so Section 6(2) of the West Bengal Act I of 1954 does not apply to such case. Both the courts below have found that defendants have no right in the sub-soil or in the banks and they merely hold a Jalkar right. In view of the aforesaid Supreme Court case of *State of West Bengal v. Saradiya Thakurani* (supra) and *Ahindra Nath v. Manmatha Nath* (supra) it must be held that the defendants are licensees and not tenants with regard to the Jalkar in question.

8. The important question arises what is the effect of the statement in the plaint that the defendants are tenants. It has been contended on behalf of the

appellants that since the plaintiff is bound by the statement in the plaint, without amendment of the plaint the Court cannot arrive at any decision on this point. Now, even the Judicial Committee has stated that Indian pleadings are generally loosely drafted and specially in mofussil. This observation was also made by C. C. Biswas, J. in the case reported in (1941) 45 CWN 17 at p. 20. In the case of Madan Gopal Kanodia Vs. Mamraj Maniram and Others, it has been stated that it is well-settled that pleadings are loosely drafted in the Courts and the Court should not scrutinize them with such meticulous care as to result in genuine claims being defeated on trivial grounds.

9. The learned Advocate appearing on behalf of the appellants has referred to the case of Ganesh Chandra v. State of West Bengal reported in (1958) 62 CWN 49 to show that an incorporeal right of fishing unconnected with the soil is a benefit arising out of land, that is to say, "a profit a prendre" and it vests in the State by virtue of the West Bengal Estates Acquisition Act. This decision has been impliedly overruled by the aforesaid decision of Ahindra Nath v. Manmatha Nath (supra). Further reliance has been placed on the case of Ram Ran Bijai Singh and Others Vs. Behari Singh alias Bagandha Singh, to show that possession of tenant is not khas possession of the proprietor and consequently Section 6 (1) (c) of Bihar Land Reforms Act of 1950 does not apply to such case and the result is that the proprietor is not entitled to a decree for recovery of khas possession. This decision is also clearly distinguishable because of the aforesaid Supreme Court decision of State of West Bengal v. Saradiya Thakurani (supra).

10. Section 6 of the West Bengal Estates Acquisition Act gives the intermediary a right to retain certain lands. It will be pertinent to point out that Clauses (a), (b) and (e) of Sub-section (1) of Section 6 show that an intermediary can retain land comprised in homesteads, comprised in or appertaining to buildings and structures and tank fisheries respectively though the same may not be in his khas possession. But Clauses (c) and (d) of Sub-section (1) of Section 6 indicate that an intermediary can retain non-agricultural land and agricultural land respectively if the same is in his khas possession. Moreover, as pointed out previously, in view of the Special Bench decision of Ahindra Nath v. Manmatha Nath (supra), there is no doubt that the Jalkar right, which is merely a licence, does not create any lease in favour of the defendant and in spite of such licence the person owning the tank fishery can retain that property u/s 6(1)(e) of the West Bengal Act I of 1954 as a direct tenant under the State of West Bengal. So there is no bar in such circumstances to say that the plaint was loosely drafted by saying that the defendants were tenants. On account of the loose statement made in the plaint, the defendants will not be elevated to the status of tenants. For this defect in drawing up of the plaint, the same cannot be thrown out at this stage of the proceeding. But for this the costs will be disallowed throughout.

11. In view of the aforesaid discussion the submissions made on behalf of the appellants cannot be accepted.

12. The appeal is, therefore, dismissed.

13. The parties will bear their own costs throughout.