
(1889) 05 CAL CK 0012
In the Calcutta High Court

Kristo Lal Singh and Another	Vs	APPELLANT
Kristo Bulluv Ghose and Others		RESPONDENT

Date of Decision : 29-05-1889

Acts Referred:

Bengal Tenancy Act, 1885 — Section 12

Citation : (1889) ILR (Cal) 643

Hon'ble Judges : W. Comer Petheram, C.J.;Gordon, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—This is a suit brought by a landlord, who is the putnidar, to recover the rent of the durputni.

2. The answer which is made by the defendant is this,-He says: a part of the rent I owe you, and I have paid that into Court; as for the rest I am not liable to you, because at the time when that rent accrued I had transferred the durputni to a purchaser under the provisions of the Bengal Tenancy Act, Sections 11 and 12, and that transfer, so far as I was concerned, was complete.

3. The answer which the landlord makes to that is this,-He says: that is quite true, you did make the transfer you say, but I did not receive notice of it from the Collector, and therefore, notwithstanding the fact that you had transferred your interest, you are still liable for the rent, and the question for us to consider is that question.

4. Section 11 of the Bengal Tenancy Act provides that every permanent tenure shall be capable of being transferred. That may or may not be declaratory of the old law, but for the purpose of what I am going to say, that is the law that is created by that Act, and every such tenure is made transferable by the authority of that Act. Then comes Section 12, which limits the power of transfer. If it were not for Section 12, the transfer u/s 11 might be made in any way, either by an unregistered deed, or verbally; but Section 12 of the Act provides a limit, and the limit is this, that the transfer of permanent tenures can be made only by a

registered instrument. In this particular case, it was made by an instrument which it is admitted was duly executed, and which it is also admitted was duly registered, and consequently the transfer from the vendor to the vendee was complete. Then come the other parts of the section, and Sub-section 2 provides a condition precedent to the registration, that certain monies shall be paid by the vendor into the hands of the Registrar before he shall be entitled to the registration, but the registration concludes all that, because the registration could not take place unless those things had been done, and it is not disputed in this case that those things were done, so that the registration is absolutely complete.

5. Then comes another sub-section which provides what the Registrar is to do after the registration, how he is to dispose of the money in his hands, and what notices he is to give of the fact of registration; but that seems to us to be a mere question as to how he is to deal with the matter and how the Collector is to deal with the money when it comes into his hands. But, so far as the transfer is concerned, the only thing which this Act says is necessary to complete it is registration. That was done, and it seems to me that the transfer was complete as soon as the document was registered.

6. Then is there any reason or possibility to say that, notwithstanding the fact that the transfer was complete, this man still remained liable to his landlord. The liability here is a liability in consequence of the estate, and it is admitted that it is an ordinary rule that the liability ceases when the estate is transferred and the vendor ceases to have any estate in the property, but that, in whatever way the transfer may be made, the liability remains on the original tenant, until notice has been given to the landlord.

7. As to that, it is enough for us to say that the Act is absolutely silent upon the point, and we do not think that any such condition of things can be inferred from the provisions of the Act. If the Legislature had intended to impose any such limitation upon the right to transfer, we think they would have said so in so many words. They have not done so, and we think we cannot imply it from what they have said.

8. Under these circumstances we think that the Judge was wrong in the view he took of the law in this case, and this appeal must be decreed with costs.