
(1908) 01 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 497 of 1906

Kumar Bunwari Mukunda Deb Bahadur

APPELLANT

Vs

Bidhu Sundar Thakur and Others

RESPONDENT

Date of Decision : 22-01-1908

Acts Referred:

Citation : (1908) 01 CAL CK 0006

Final Decision : Dismissed

Judgement

Maclean, C.J.—The only point argued on this appeal is whether the Plaintiffs are entitled to recover judgment having regard to the frame of the suit. It appears that under a potta dated 1823, the then zemindar granted to the predecessors in title of the Plaintiffs a putni giving them possession of a certain Mouza including the chakran lands. It is clear upon the fact of the putni potta, specially having regard to sec. 41 of Reg. VIII of 1793, that at the time of the putni the zemindar was the owner of the chakran lands and that these lands are included in and covered by the putni. The chakran lands were subsequently transferred to the zemindar who took the transfer, subject to the provisions of sec. 51 of the Village Chowkidari Act (Act VI of 1870 B.C.) and the Plaintiffs now bring the present suit to recover possession of these chakran lands. Plaintiffs Nos. 1 to 8 are entitled to an onethird share under the putni; Plaintiff No. 9 to another third; and Defendant No. 3 to the remaining third, and he, it appears, let out his interest in durputni to Plaintiff No. 10 who is the same person as Plaintiff No. 3 so that, we have before the Court all the persons who are interested in the putni and all the persons who are entitled to claim possession of the land in question, as against the zemindar : in other words, every body interested in the putni is before the Court, either as Plaintiff or as Defendant, the suit being one for possession of the chakran lands. Then it is said that this is not a suit for possession but is a suit for specific performance of a contract, and being a suit for specific performance of a contract, the suit cannot successfully prevail unless all the parties to the contract who seek to have it specifically performed are co-Plaintiffs. The answer to that appears to be two fold. I do not think this is an action for specific performance of

a contract. This is an action for possession of the chakran lands which were included in the putni to which I have referred. There is no agreement to grant a putni of these lands when they were transferred to the zemindar, of which it is necessary to obtain a decree for specific performance. The putni is a concluded contract, and there is no agreement of which specific performance can now properly be granted. There is no doubt authority for the opposite view in the case of *Ranjit Singh v. Radha Charan Chandra* (1). But with great respect I do not assent to the view expressed in that judgment which seems to me to be inconsistent with the previous judgments of one of the learned Judges who was a party to the later decision, namely in the case of *Kazi Nawaz Khoda v. Bam Jadu Dey* 11 C.W.N. 201: s.c. ILR 34 Cal. 109 (1906), and also in the case of *Hari Narain Mozumdar v. Mukund Lal Mundal* 4 C.W.N. 814 (1900). The two decisions I have last mentioned appear to me to be inconsistent with the view taken in the case of *Ranjit Singh v. Radha Charan* ILR 34 Cal. 564 (1907); I do not notice they were referred to in the judgment in that case. If then it is a suit merely for possession under the contract contained in the putni, I think the suit is properly framed and agreeing with both Courts, I think the Plaintiffs are entitled to judgment. As regards the other two points, the point as to whether the idol ought to have been made a party and the question what rent should be paid for the resumed lands, as no argument has been addressed to us on those points and they have been abandoned, I need say nothing about them.

2. The appeal fails and must be dismissed with costs.

Coxe, J.

1 agree.