
(1923) 01 CAL CK 0068
In the Calcutta High Court
Case No : S.A. No. 729 of 1921

Mahammad Kasiruddin Prodhan and others

APPELLANT

Vs

Bani Kanta Das and others

RESPONDENT

Date of Decision : 10-01-1923

Acts Referred:

Citation : (1923) 01 CAL CK 0068

Final Decision : Dismissed

Judgement

B.B. Ghose, J.—This appeal arises out of a suit for ejectment on the ground that the defendants, Nos. 1, 2 and 3 have purchased a non-transferable occupancy holding. The holding originally belonged to one Ananda Das. The plaintiffs are the 8 annas owners of the landlord's interest, having purchased it in Jaitha 1322 B.S. The defendants purchased their raiyatee interest in Pous 1319 B. S. Before the purchase of the landlord's interest by the plaintiffs, they were Ijaradars under the previous landlord for a certain time. The plea of the defendants was that the holding was purchased with the knowledge and consent of the former tenure-holders and the plaintiffs also as Ijaradars had received rent from them. The Court of first instance gave a partial decree in favour of the plaintiffs. On appeal by the defendant, that judgment has been reversed and the appeal to this Court is preferred by the plaintiffs. The Subordinate Judge has held that, after the purchase of the holding by the defendants they received dakhilas from the plaintiff No. 1 who was then the Ijardar under the tenure-holders and previous to that from the tenure-holders by payment of rent. But in those rent receipts, the name of the defendant No. 2 appears as paying rent for the holding as Marfatdar. It has been found that the original tenant Ananda, whose name appears in the dakhilas, was dead and the learned Subordinate Judge finds that no person was in possession as tenant other than the defendant No. 2. The defendant No. 2 could not, therefore, have paid rent as the agent of the supposed tenant who was then dead. Then the learned Judge finds that the Gomastha of the original tenure holders had accepted the rent from the transferees and, relying upon the case of Suduman Jamadar v. Behari Mahton 15 C.W.N. 953 = 10 I.C. 456, he

holds that, it was within the special knowledge of the landlords as to the authority of the Gomastha and they had not adduced any evidence as they ought to have done, to show that the Gomastha had acted beyond his powers in receiving rent from the defendants. He further finds that the landlords never repudiated the act of the Gomastha in receiving the rent but accepted the rent paid by the defendants, nor did the landlords ever offer to refund the money received on their behalf by their agent from the defendants. He therefore holds that the landlords are bound by the act of their Gomastha. It is contended by the learned Vakil for the appellants that the decision above referred to is erroneous, and that it should not be followed, and he cites in support of his contention the case of Janki Sahii v. Thakur Ram Bahadur Singh (1905) 2 C.L.J. 231. Assuming that we were to accept the contention raised by the learned Vakil which I am not disposed to do, the finding of the Subordinate Judge which amounts to a ratification of the act of the agent by the landlords in accepting the rent paid by the defendants and in not repudiating the act of their agent would be sufficient to support the judgment of the learned Judge. It cannot be said as a general principle, as has been observed by Sir Lawrence Jenkins, C.J., in the case of Probha Bati Dasi v. Taibatannessa Choudhurani 17 C.W.N. 1088 = 19 C.L.J. 62 = 20 I.C. 654 that because a dakhila has been given as Marfatdar, it cannot amount to a recognition of the transferee but each case should be considered upon its own facts. In this case, the learned Subordinate Judge sums up his findings in these terms. In this view on the evidence of the defendant No. 2 and Narain (who was an intermediate transferee) and the dakhilas and other circumstances noted above, the defendants appear to have been recognised as tenants by the plaintiffs' vendors and they became tenants on payment and acceptance of rent under the plaintiffs' predecessors. This finding is sufficient to dispose of the case. The appeal is, therefore, dismissed with costs.

Walmsley, J.

2. I agree.