

(1936) 06 CAL CK 0015
In the Calcutta High Court

Manmatha Pal Choudhury

APPELLANT

Vs

Saroj Ranjan Singha and Others

RESPONDENT

Date of Decision : 05-06-1936

Acts Referred:

Citation : AIR 1936 Cal 639

Hon'ble Judges : M.N. Mukerji, J; Jack, J

Bench : Full Bench

Judgement

M.N. Mukerji, J.—This is an appeal by defendant 1 from a decree passed against him in a suit for khas possession, for rent and for mesne profits in respect of a durpatni tenure. One Mathura Mohan Pal Choudhury held a putni, which had its origin in 1818, of Mehal Taraf Mahatpur comprising 57 mauzahs and appertaining to Touzi No. 334 of the Nadia Collectorate, the said towzi belonging to the Nadia Raj. Prior to his acquisition of the putni, Mathura Mohan had a durpatni in some of the mauzahs. The appellant holds some mauzahs in durpatni and others in sepatni. Mathura. Mohan died leaving two daughters, Sarat. Kumari and Joydurga and the plaintiffs are the sons of the former. He also left a will by which he bequeathed all his properties to his two daughters in equal shares. The two daughters executed an agreement in 1316 (1909) and the plaintiffs have been in possession of a moiety share in the properties since their mother's death. In 1922, Joydurga, the surviving daughter, commenced a suit praying for a declaration of her absolute right in a moiety share of the properties, left by her father. This litigation went up to the Privy Council and the result was a declaration that she had only a life interest and the agreement also was upheld. For arrears of putni rent for the period Baisakh to Aswin 1334 (April, to October 1927) the putni was sold under Reg. 8 of 1819 on 1st Augrahasan, 1334 (17th November 1927) and was purchased by the Maharaja of Nadia, the proprietor of the touzi. The putni having been created prior to the Regulation, the sale under the Regulation was void. Several suits were then instituted for setting aside the sale: One by the plaintiff, another by the appellant, and several, others by holders of some of the undertenure. Pending these suits the appellant entered

into a compromise with the Maharaja on 14th Bhadra 1335 (30th August 1928), under which he obtained a putni lease from the latter in respect of all the mauzahs that he was holding in durpatni and seputni under the plaintiff. Later on however the other suits, amongst which the plaintiffs' suit was one were decreed, the sale being set aside. The date of this decision was 30th April 1930.

2. On 17th April 1931, the plaintiffs instituted the present suit for khas possession on the ground that there was forfeiture incurred by the appellant in taking a patni lease of the mauzahs on the basis of the compromise which amounted to a denial of the plaintiff's title for rent from Kartic 1334 (October 1927) to Sravan 1335 (August 1928); and for mesne profits from Bhadra 1335 to end of 1337 (September 1928 to date of suit). Various other litigations cropped up, to the particulars of which it is not necessary to refer; and all that is necessary to say is that the Collector of Nadia was appointed receiver by this Court on 24th July 1931. The Collector, it is admitted, has, as such receiver, realised the rents of the appellant for the years 1336 and 1337. The plaintiff of this suit was filed insufficiently stamped. The deficit was made up and the suit registered on 18th July 1932. The Subordinate Judge dismissed the prayer for khas possession holding that there was no forfeiture and has made a decree for rent in plaintiff's favour for the period ending with 1335. From this decree the present appeal has been preferred, and at the hearing the decree has been challenged upon three grounds.

3. It has been contended, in the first place, that the plaintiff had no title to recover the rents at all. The plaintiffs derive their title from the Ikrarnama between the two daughters of Mathura Mohan to which reference has already been made. The Subordinate Judge has construed the effect of the Ikrarnama in connexion with the plaintiffs' prayer for ejectment and in that connexion has observed that the decision of the Judicial Committee, whatever it may have been, was not binding on the appellant who was a stranger; and that inasmuch as the right which the plaintiffs acquired under the Ikrarnama was not an absolute right to the properties, they were not entitled to claim ejectment as against the appellant. He has in this connexion used some expressions which are somewhat unfortunate, viz., that

the plaintiffs are in permissive possession of the disputed property on the basis of the Ikrarnama;

also that

the plaintiffs did not get any absolute right in their mother's share of the property but inasmuch as they are in possession without any right, their possession is simply a permissive one or it is a case of leave and license to possess without any title.

4. Now, whatever the character of the plaintiffs' title to the properties may be their title to recover the rents from the appellant can scarcely be denied, and such title has been rightly found in their favour by the Subordinate Judge. It is

an admitted fact that they had been realizing such rents from the appellant ever since they came into possession and it is not easy to see how the appellant can dispute their title to recover the rents that he has to pay. The Judicial Committee in *Sreejoy Durga v. Saroj Ranjan* 1929 P C 214 held that the Ikrarnama was binding upon her, observed that under its terms the plaintiffs were entitled to remain in possession of their mother's moiety of the estate during Joydurga's life and rejected the contention that it was a disposition of a mere expectancy. That a contention of this nature is not fit to prevail has been expressly laid down by the Judicial Committee in the later decision in *Ma Yait v. Official Assignee* 1930 P C 17

5. Secondly, it has been urged that the property vested in the Receiver and the title to recover the arrears of rent did also vest in him, and so the plaintiffs had no title to recover the rents. Reliance for the purpose of this contention was placed on the decision in *Bhubaneswari Koer v. Ajodhaya Singh* (1912) 15 C L J 339 That was a case in which the Receiver contested the right of the owner of the property to recover the rents in defiance of his right and in that way was a case very different from the present. It is true that there is a passage in the judgment in the case, which shorn of its context may lend some support to the contention. But it is not the law that a receiver, unless he be a receiver in insolvency, is vested with title to the property itself as against the owner. And so far as the right to realize the rents is concerned, such right depends entirely on the terms of the appointment of the receiver. That the Collector, as receiver, had no right to realize the arrears for any period prior to 1336 is clear from an order that this Court made. Lastly, it has been urged that the plaintiffs are not entitled to interest on the arrears. It is not clear from the decision of the Court below on what ground the claim was resisted, and all we get in the written statement and also in the judgment is that it was pleaded that the interest claimed was excessive or unfair. A paragraph in the judgment dealing with the question whether there was demand and willingness to comply subject to a condition has been referred to before us. But that paragraph evidently deals with the question whether forfeiture was waived. If the appellant wanted to have exemption or deduction of interest, it was for him to put in a proper plea and have it adjudicated on proper materials. Two facts however are perfectly clear.

6. There was no justification whatsoever for withholding the rents due up to the date of the compromise and if any rent due for any subsequent period had been tendered it would never have been received, for by such acceptance the plaintiffs would have to waive their claim on the ground of forfeiture. It is fair therefore, that the plaintiffs should get interest on arrears due up to Sravan 1335 and not for any arrears for the remainder of 1335. The decretal amount however should carry interest at the rate allowed by the Court below. Subject to the variation made above, the appeal will be dismissed. Costs to parties in proportion to their success.

Jack, J.

7. I agree.