

(1953) 12 CAL CK 0004
In the Calcutta High Court

Case No : Appeals from Appellate Decrees No's. 163 and 166 to 169 of 1949

Naba Kumar Singha

APPELLANT

Vs

Hashimuddin Biswas

RESPONDENT

Date of Decision : 21-12-1953

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 11

Bengal Tenancy Act, 1885 — Section 72

Transfer of Property Act, 1882 — Section 50

Citation : 58 CWN 319 : (1955) 2 ILR (Cal) 279

Hon'ble Judges : Das, J

Bench : Single Bench

Advocate : Amiya Kumar Mookerji, for the Appellant; Jagannath Gangopadhyay and Muktipada Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Das, J.—These seven appeals arise out of suits for recovery of rent and cesses for the period 1349 to 1352 B.S. The Plaintiffs are the Appellants in these appeals. I shall first take up second appeals Nos. 164 and 165 of 1949.

2. Appeal from Appellate Decree, No. 164 of 1949, arises out of Rent Appeal No. 124 of 1947 which in its turn arose out of Rent Suit No. 4033 of 1946. In this suit for rent there was a dispute as to the amount of rent payable. The landlord's claim was that the rent was payable at the rate of Rs. 74-11-9p. The tenants' contention, on the other hand, was that the rate of rent payable was Rs. 68-5-4p. The lower appellate Court has accepted the tenants' contention and has come to a finding of fact that the rate of rent payable is Rs. 68-5-4p. Mr. Amiya Kumar Mukherjee who has appeared in support of the appeal has exercised his option and the effect of that exercise was that by operation of law the darpatni of Jagadindra ceased to exist. If the darpatni ceased to exist, as the learned Judge of the lower appellate Court points out, one fails to understand how the darpatni would become vested in the purchaser at the auction sale when

the latter exercised his option to annul the darpatni. The effect of the exercise of option is to render the darpatni nonexistent so far as the purchaser at the astam sale is concerned. The consequence is that as the intermediate interest came to an end, the auction-purchaser was brought face to face with the subordinate tenant who becomes thereafter liable to pay his rent to the superior landlord, the purchaser at the astam sale. In my opinion the annulment of a darpatni has the effect of transferring the darpatnidar's interest to the purchaser at the astam sale. In this view Section 72 of the Bengal Tenancy Act can have no application.

3. On this finding it would appear that the Defendants would not be entitled to get credit for the alleged payments made by them of the rents for the periods 1349, 1350 and 1351 B.S. as the case may be, to the outgoing landlord Jagadindra Nath Chowdhury. It is not disputed that Section 50 of the Transfer of Property Act is applicable in these cases. It might have been contended that the effect of the above finding is to entitle the landlord to recover from the tenants Defendants the rents which they alleged to have paid to the outgoing landlord Jagadindra Nath Chowdhury. My attention was, however, drawn by Mr. Jagannath Gangopadhyay to a decision of Sharpe, J., in the case of *Asiram Bewa v. Nanda Kishore Laha* ILR [1947] 1 Cal. 155. That decision lends colour to the view that even though Section 72 of the Bengal Tenancy Act may not apply, the tenant may claim relief in regard to payments bona fide made by them to the outgoing landlords. This position is not disputed on behalf of the Appellants. For the purposes of the present cases it is not, therefore, necessary to consider, the correctness or otherwise of the view taken in that case. It appears to me that the judgment of the lower appellate Court on the question whether the payments alleged to have been made by the Defendants tenants are bona fide or not is not very satisfactory. In one place of the judgment the learned Judge observed:

At best, these people (Defendants) knew of the auction purchase of the patni mahal by the Plaintiff.

4. In another place he says:

Exhibit A series cannot be said to be either mala fide or not true.

5. The learned Judge also observes that the alleged payments are dated subsequent to the appellate judgment in a suit instituted in all these appeals were tenants under Jagadindra Nath Chowdhury. The patnis held under the Plaintiffs were brought to astam sale on May 16, 1941 and was purchased by the zemindars. The finding of the lower appellate Court is that the darpatni of Jagadindra was annulled by the Plaintiffs auction-purchasers at the astam sale. It is the Defendants' case that they paid rents for the period referred to above to the outgoing landlord, namely, the darpatnidar Jagadindra Nath Chowdhury. The question which was debated in the Courts below was whether the Defendants, the tenants under the darpatni, could claim protection u/s 72 of the Bengal Tenancy Act as regards the rents alleged to have been paid by them to the outgoing landlord Jagadindra Nath Chowdhury. The Courts below were of opinion

that Section 72 of the Bengal Tenancy Act applied to these cases and as the Defendants paid rents for the periods referred to in the different cases, to the outgoing landlord Jagadindra Nath Choudhury, Section 72 of the Bengal Tenancy Act availed the Defendants. In order to understand the legal position it is necessary to state the material portion of Section 72 of the Bengal Act which reads as follows:

A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

6. In order that Section 72 of the Bengal Tenancy Act may be attracted the Plaintiff must be a person to whom the interest of the Defendants' landlords was transferred and secondly that the payments of rent must be made before notice is given by the tenants' landlords to the tenants. As already stated that Jagadindra Nath Chowdhury was the Defendants' landlord. The question is whether the Plaintiffs, the purchasers at the auction sale, can be said to be a transferee of the interest of Jagadindra who was a darpatnidar. The astam sale did not purport to sell the darpatni. At the astam sale the patni interest was brought to sale and by virtue of Section 11 of the Patni Regulation the auction-purchaser had the right to annul the subordinate tenure held under the patni, namely, the darpatni interest of Jagadindra. The lower appellate Court has observed:

that with the auction purchase of the patni tenure the darpatni interest of the immediate landlord had by operation of law ceased to exist.

7. The position is undisputed that the sale of a patni under the Astam Regulation does not ipso facto, annul the darpatni. The effect of a patni sale is to render a darpatni held under the patni voidable. Before the darpatni is annulled the patnidar must exercise his option to avoid the patni. The passage which is quoted from the judgment of the lower appellate Court proceeds on the footing that the auction-purchaser at the astam sale exercised his option and the effect of that exercise was that by operation of law the darpatni of Jagadindra ceased to exist. If the darpatni ceased to exist, as the learned Judge of the lower appellate Court points out, one fails to understand how the darpatni would become vested in the purchaser at the auction sale when the latter exercised his option to annul the darpatni. The effect of the exercise of option is to render the darpatni nonexistent so far as the purchaser at the astam sale is concerned. The consequence is that as the intermediate interest came to an end, the auction-purchaser was brought face to face with the subordinate tenant who becomes thereafter liable to pay his rent to the superior landlord, the purchaser at the astam sale. In my opinion the annulment of a darpatni has the effect of transferring the darpatnidar's interest to the purchaser at the astam sale. In this view Section 72 of the Bengal Tenancy Act can have no application.

8. On this finding it would appear that the Defendants would not be entitled to get credit for the alleged payments made by them of the rents for the periods 1349, 1350 and 1351 B.S. as the case may be, to the outgoing landlord Jagadindra Nath Chowdhury. It is not disputed that Section 50 of the Transfer of Property Act is applicable in these cases. It might have been contended that the effect of the above finding is to entitle the landlord to recover from the tenants Defendants the rents which they alleged to have paid to the outgoing landlord Jagadindra Nath Chowdhury. My attention was, however, drawn by Mr. Jagannath Gangopadhyay to a decision of Sharpe, J., in the case of *Asiram Bewa v. Nanda Kishore Laha* ILR [1947] 1 Cal. 155. That decision lends colour to the view that even though Section 72 of the Bengal Tenancy Act may not apply, the tenant may claim relief in regard to payments bona fide made by them to the outgoing landlords. This position is not disputed on behalf of the Appellants. For the purposes of the present cases it is not, therefore, necessary to consider, the correctness or otherwise of the view taken in that case. It appears to me that the judgment of the lower appellate Court on the question whether the payments alleged to have been made by the Defendants tenants are bona fide or not is not very satisfactory. In one place of the judgment the learned Judge observed:

At best, these people (Defendants) knew of the auction purchase of the patni mahal by the Plaintiff.

9. In another place he says:

Exhibit A series cannot be said to be either mala fide or not true.

10. The learned Judge also observes that the alleged payments are dated subsequent to the appellate judgment in a suit instituted by Jagadindra for a declaration that his darpatni interest was not affected by the astam sale. That suit of Jagadindra failed in the trial Court and the decision was affirmed on appeal. It also appears that the astam sale took place on May 16, 1941. The alleged payments are dated between "Chaitra, 1349 B.S. and "1351 B.S., that is, sometime after the astam sale had taken "place and after the suit by Jagadindra had failed in both "Courts" as pointed out by the learned Judge at page 16 of the paper-book. As the question involved is a question of fact, I think it desirable to remit the question as to whether the payment made by the tenants was bona fide or not and whether the tenants had knowledge of the astam sale or not for a decision by the lower appellate Court. If the lower appellate Court comes to a finding adverse to the tenant-Defendants and holds that the payments were either mala fide or that they were made with knowledge of the astam sale, the learned Judge will decree the Plaintiffs' claim also for the period in regard to which the same had been dismissed. If, on the other hand, the learned Judge comes to a finding that the tenants bona fide made the payments without their knowledge of the astam sale, the learned Judge will maintain the decision already reached by the lower appellate Court. These five appeals are allowed and the cases are remitted to the lower appellate Court for disposal.

11. In all these five appeals the parties will bear their own costs in this Court and the lower appellate Court. Further costs will be in the discretion of the lower appellate Court.