

(1912) 11 CAL CK 0005
In the Calcutta High Court

Nagar Ali Joardar

APPELLANT

Vs

Kala Chand Sardar

RESPONDENT

Date of Decision : 28-11-1912

Acts Referred:

Citation : 17 Ind. Cas. 654

Hon'ble Judges : Holmwood, J;Chapman, J

Bench : Division Bench

Judgement

1. This second appeal arises out of a suit brought by the plaintiff, a lady, shebait under her husband's Will, to eject the appellant, the principal defendant, from three jamas which had come into his possession under a sale certificate dated September 1903, which a third party had obtained against defendants Nos. 1 to 6.

2. It is extremely difficult to follow the judgment of either of the Courts inasmuch as the parties are wrongly described, the transferee being described as the principal defendant and not numbered and the transferors being Nos. 1 to 6. But this much is clear that by the sale certificate Exhibit B, the whole of these three jamas were transferred to the principal defendant. Subsequently, the plaintiff sued the six defendants for rent, but the defendants Nos. 3 to, 5 were exonerated from, the suit for what reason we know not; but it must have been because the Court held they had no interest in the holding, for we find that the whole of the arrears sued for were decreed against defendants Nos. 1, 2 and 6. These points have not been considered by the learned Judge at all, and the Munsif in his judgment, although he set out at page 14 to describe this litigation, unfortunately did not go far enough. But the question is a pure question of law, and we think that we can deal with it on the authorities and dispose of the suit.

3. The contention on behalf of the principal defendant, who is the appellant and transferee of the whole of this jama, is that inasmuch as the learned Judge has found that the defendants Nos. 3 to 5 are still in possession of a portion of the jama, no forfeiture could have been incurred on the authority of the rulings in

Kabil Sardir v. Chandra Nath Nag Chowdhry 20 C. 590; Rai Kamaleswari Persad Sing Bahadur v. Maharaj Harbullab Narain Singh Bahadur 2 C.L.J. 369; Chandra Mohun Mookhopadhaya v. Bissesswar Chatterjee 1 C.W.N. 158; Durga Prosad Sen v. Doula Gazee 1 C.W.N. 160 and Sheikh Gozoffer Hossein v. E. Dabliish 1 C.W.N. 162.

4. Now we find that all these cases are distinguishable on the ground on which the case of Kabil Sardar v. Chandra Nath Nag Chowdhry 20 C. 590 was distinguished by this Court in the case of Kallinath Chakravarti v. Upendra Chunder Chowdhry 24 C. 212 : 1 C.W.N. 163 where it was held that where the defendant had purchased the entire rights of the original tenants of certain jote lands without obtaining the consent of the landlord to the transfer of the tenures, and the original tenants had remained in possession as subtenants of the transferees, the principle laid down in Kabil Sardar v. Chandra Nath Nag Chowdhry 20 C. 590 did not apply. Now in all these cases, which have been cited to us by the appellant and which we have just now noticed, the rule laid down is that the sale of a part of the holding is not a ground for forfeiture. The language in the latter part of the judgment in the case of Kabil Sardar v. Chandra Nath Nag Chowdhry 20 C. 590 is not very clear. After laying down that the Full Bench in Nurendro Narayan Roy v. Ishen Chandra Sen 13 B.L.R. 274 : 22 W.R. 22 had held that the reason why the zemindar is entitled to obtain khas possession of the lands of the holding which has been sold and of which possession had been given to the purchaser, is that the sale and transfer of possession to the purchaser conveys no title to him and as the ryot has left the holding and disclaims any interest in it, he must be deemed to have abandoned it and the land remains a piece of laud within the Zemindari to which the person in possession has no title and which has been abandoned by the owner, does not seem to be consistent with the subsequent finding in that case, that the sale or parting of possession of the whole or part of the holding is not made a ground for forfeiture by the Tenancy Act. But the facts in that case show that there was no question of parting with the whole of the holding, because the Judges say in the present case "so far from having abandoned the holding, the ryot and his sons since his death have paid rent of the whole in the Collectorate and they have themselves always cultivated a portion of it," so that the words in the placitum or parting with the whole" are obiter; and it is perfectly clear from the other rulings that the rule is that the transfer by an occupancy ryot of a portion of his holding does not effect the forfeiture of his tenancy, if he continues to be in occupation of the remainder, and this is what is laid down in the cases in 1 Calcutta Weekly Notes. In every case, there was a transfer of only a portion of the holding. Now in the case of Kallinath Chakaravarti v. Upendra Chunder Chowdhry 24 C. 212 : 1 C.W.N. 163 to which we have referred, the whole of the holding was transferred, and the fact that the original tenants came back again as sub-tenants or in any other way, was held not to get rid of the original abandonment.

5. After the argument was over, our attention was called to the ruling in Dina Nath Roy v. Krishna Bejoy Saha 9 C.W.N. 379 where it was held that, the original

tenants, having taken under-lease from their transferee, could not have been said to have abandoned the holding. But we find that this case is clearly distinguishable, because they were holders of the entire holding and they expressed their willingness to pay rent to the landlord and ignore the transfer.

6. We think that the present case is governed by the rule laid down in *Kallinath Chackerbutty v. Upendra Chandra Chowdhry* 24 C. 212 : 1 C.W.N. 163 and we are fortified in this opinion by the findings of the learned Munsif on the facts of the case which have not been properly dealt with by the lower Appellate Court. Had it been necessary to go into facts which the learned Judge has not properly gone into, we should have to remand this case because we are not satisfied that the learned Judge's ipso dixit in the decretal part of his judgment that defendants Nos. 3 to 5 are in part possession has any foundation, inasmuch as he gives no reason for it, and the previous part of his judgment makes it very difficult to understand when he is talking of defendants Nos. 1, 2 and 6 and when he is talking of defendants Nos. 8, 4 and 5. The defendants Nos. 3, 4 and 5 happen to be ladies and their contention is that they obtained small parcels of the property by partition for their sustenance. It does not appear that any evidence was ever given of any such partition and there is no finding in either court's judgment that any such partition ever took place. It would appear that these ladies were in the position of maintenance-holders and that when the entire jamas were sold under the money-decree by the sale certificate, Exhibit B., whatever rights they had, must have passed, inasmuch as the decree was against them and the sale certificate passed the whole of the jama. It is, therefore, perfectly clear to us that the sale under the certificate constituted a complete ouster of all the defendants from the jamas and that on the authority of the Full Bench, the plaintiff landlord is now entitled to re-enter.

7. The result is that the appeal of the principal defendant is dismissed and the cross-appeal of the plaintiff is decreed. There will be a decree in favour of the plaintiff for khas possession of the whole of the jamas but without mesne profits excepting in so far as they were allowed by the Munsif; in other words, the judgment and decree of the lower Appellate Court are set aside and the judgment and decree of the Munsif restored.

8. The cross-appellant is entitled to his costs in this Court and in the lower Appellate Court.