

(1920) 06 CAL CK 0027
In the Calcutta High Court

Provash Chandra Chatterjee

APPELLANT

Vs

Jahar-Ud-Din Mondal and on his death his heirs Asimaddi
Mondal and Others

RESPONDENT

Date of Decision : 15-06-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 15

Citation : 59 Ind. Cas. 49

Hon'ble Judges : Walmsley, J;Buckland, J

Bench : Division Bench

Judgement

1. The facts from which this appeal arises are as follows: one Ekim Molla had three Jamas; he died about 1290 B.S. leaving; a widow, Bibijan, and two daughters: the daughters died before their mother: one of them, Arifa left a son, Gafur, who survived his grandmother. Bibijan died in 1309. In 1907 the landlord brought a rent suit for the rent of the three jamas against Gafar alone, and obtained a decree, and in execution of that decree he caused the jamas to be sold and bought them himself in January 1908 after which he granted settlement to various tenants.

2. One of the plaintiffs is a sister, Bibijan, and the other plaintiffs are the sons of a second sister. They claim to be the heirs of Bibijan: they say that Gafur did not inherit any interest in the jamas, and that the decree against him only had no effect so far as they are concerned.

3. The first defendant, the appellant, is the landlord. The other defendants are tenants to whom the landlord granted settlement after his purchase: they have not contested the suit, and we are not concerned with them.

4. In addition to a claim by inheritance, the plaintiffs set up the claim that Ekim Molla had transferred the entire interest to Bibijan by a hebanama, and also that, after Ekim's death, Bibijan had held the land adversely to her daughters and others for over twelve years. Both these claims have been decided against the

plaintiffs and both the lower Courts have found that the plaintiffs cannot claim more than the share which had passed to Bibijan by the death of her husband, and, later, of her daughter. The first Court found this share to be 5 annas, 12 gandas, odd, but the lower Appellate Court fixed it at 4 annas, 1 ganda, odd; and, although the third ground in the memorandum of appeal relates to this point, nothing was said about it in argument, so the interest in dispute must be taken to be 4-annas, 1 ganda, odd, share in the jamas.

5. It is common ground that after Bibijan's death Gafur's name was registered in the landlord's serista, while the plaintiffs' names were not so registered. The decree was obtained by the landlord against the sole re-corded tenant.

6. The contention of the appellant-landlord is that, as he obtained a decree against the sole recorded tenant, the execution sale passed the entire tenure, and the plaintiffs are Hound by the decree and the sale.

7. On the other hand, the case for the plaintiffs is that as they were not parties to the suit, and as Gafur did not represent them, their interests were not affected by the decree and the sale. The lower Courts have accept-ed this view.

8. As to the nature of the tenancy, it appears that the landlord urged that the jamas were raiyati jamas, and that he did so to bring in the suit within the special rule of limitation. His own Pleader, however, had to admit that the jamas were tenures. Now the plaintiffs suggest that, though they may be tenures, they are not proved to be permanent tenures: their claim by inheritance, however, is based on one of the characteristics of a permanent tenure, and, although the pleadings carry the history of the tenures back for more than sixty years, there is no reference to any time limit, so I have no doubt that the tenures in dispute are permanent, tenures.

9. Another preliminary point is in regard to the nature of the sale. One of the grounds taken in the memorandum of appeal is that the sale was a sale under a rent decree, that is, that it had the effect of a sale held under Chapter XIV of the Tenancy Act. The learned Vakil for the appellant, however, has not pressed this point: he says that the lower Courts are wrong in treating the decree as a money-decree but that the effect is the same in the circumstances of this case. His argument is that as the jamas are permanent tenures the plaintiffs ought to have registered their names in accordance with the provisions of Section 15 of the Tenancy Act, that as they did not do so, the land-lord was under no obligation to seek them out, that it was enough for him to sue Gafur, who had caused his name to be registered, and that, whatever view be taken of the nature of the decree, inasmuch as -it was against the sole recorded tenant, the whole interest passed. In other words, he urges that, by omitting to comply with the provisions of Section 15 of the Tenancy Act, the plaintiffs incurred the penalty of having their interest destroyed by proceedings to which they were not parties.

10. Before examining this broad proposition, it is desirable to refer again to the pleadings and to the findings of fact recorded by the lower Courts. I have already

said that according to the landlord, now appellant, the tenancies were raiyatis, and further that they were non-transferable. He also said that Gafur and his father possessed the lands by cultivating them. With regard to registration, he said that Gafur's name was registered in his serista, not that Gafur had complied with the provisions of Section 15 of the Tenancy Act. Then, the findings of the lower Courts about this registration are not favourable to the landlord: the first Court says that Rahamatulla got his son's name registered to defeat the plaintiff's claim, while the learned Judge points out that Rahamatulla was then in the service of the landlord, and he says that the landlord must have been perfectly aware that in registering the name of Gafur alone he was excluding Bibijan's heirs.

11. It is true that the plaintiffs did not take the steps which they ought to have taken to safeguard their interests, but, in view of the facts and findings which I have just mentioned, I do not think that mere failure on the part of the plaintiffs to cause their names to be registered entitles the landlord to succeed. In the case of *Nitayi Behari Saha Paramanik v. Hari Govinda Saha* 13 Ind. Dec. (N.S.)1033 the learned Judges did not rest their decision on the bare proposition now advanced for the landlord as they might have done had they thought it correct, but they referred to the special features of the case and they quoted with approval the dictum of Sir Richard (sic), C.J., in an earlier case *See Jeo Lal Singh v. Ganga Pershad*, 10 C 1996--Ed that "the sale must be one which in justice and equity ought to operate as a sale of the tenure." In the present case that cannot be said of the sale, and, therefore, I think that we should affirm the decision of the lower Court and dismiss the appeal with costs.