

(1936) 12 CAL CK 0005
In the Calcutta High Court

Raj Ballav Mondal

APPELLANT

Vs

Rajendra Narain Mondal

RESPONDENT

Date of Decision : 18-12-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26(C), 26(F)(3), 76

Citation : 170 Ind. Cas. 641

Hon'ble Judges : Mukherjea, J;M.C. Ghose, J

Bench : Division Bench

Judgement

Mukherjea, J.—This rule was obtained on an application u/s 115 of the Code of Civil Procedure, and is directed against an order passed in a proceeding u/s 26(C) of the Bengal Tenancy Act. The opposite party is cue purchaser of an occupancy holding which comprises a tank, and in the notice which was served on the petitioner landlord u/s 26(C) of the Bengal Tenancy Act, the price of one Holding was stated to be Rs. 66 and it appears that the landlord's transfer fee paid by the opposite party was also calculated on that amount.

2. The landlord presented his application for purchase on March 10, 1936, and he deposited the amount of consideration money as stated in the notice together with compensation at the rate of 10 per cent, upon the same. The purchaser resisted the application of the landlord substantially on the ground that the deposit was inadequate, the contention being that the total value of the holding as set out in the kobala was Rs. 395 and that, besides the sum of Rs. 88 which was the value of the land only there were two other amounts of Rs. 150 and Rs. 157 mentioned in the kobalas which represented respectively the value of trees and fish existing on the land. It was argued that as the landlord had not deposited the whole amount of Rs. 395 or the compensation payable in respect of the same, the application should be rejected. The trial Court passed a conditional order in favour of the landlord. The petitioner was directed to put in the landlord's fees paid by the purchaser, as well as the sum of Rs. 150 which was the value of the trees standing on the land as stated in the kobala within one

week from the date of the order. On the amount being deposited the application would be allowed and in default it would stand dismissed. The Munsif was of opinion that the farther deposits directed by him were necessary under Clause (3) of Section 26(F) of the Bengal Tenancy Act, and as the trees were encumbrances within the meaning of that clause, the landlord was bound to pay the value of the trees as well before he would be allowed to pre-empt. As the fish could be removed and did not, according to the Munsif, constitute an encumbrance upon the property, the value of the fish was not to be paid by the landlord.

3. The present rule was issued against this order at the instance of the landlord, and his contention is that the Court below was wrong in holding that the trees were incumbrances within the meaning of Clause (3) of Section 26(F) of the Bengal Tenancy Act, and that he was not bound to deposit anything over and above the value of the holding as stated in the notice u/s 26(C) of the Act.

4. Now Clause (2) of Section 26(F) makes it obligatory on the landlord to deposit in Court the amount of consideration money or value of the property as the case may be, as stated in the notice, served on him together with compensation at the rate of ten per cent, of such amount. We agree with the View expressed by Mr. Justice Guha in *Radhika Lal v. Satish Chandra Sen* 39 CWN 1300 : 168 Ind. Cas. 348 : 61 CLJ 299 : 62 C 937 : 9 RC 805 that the value of the holding would ordinarily include the value of all things that are appurtenant to it, and if there are structures on the land which amount to improvement within the meaning of Section 76 of the Bengal Tenancy Act or trees, standing on the same, which cannot be separately enjoyed, the trees or structures would be regarded as parts of the holding. In this view, the value of the holding would include the value of trees as well, and the landlord would be bound to deposit not only the price of the land as stated in the *kobala* but the price of the trees also, if that is separately shown. But even then there is a difficulty in the way of the purchaser, for under Clause (2) of Section 26(F) the landlord has only to deposit the price of the property as specified in the notice, and if the purchaser omitted to include the price of the trees in the notice issued u/s 26(C), the landlord cannot be compelled to deposit the price of trees also. The words of Clause (2) are perfectly clear on this point and admit of no doubt or controversy whatever. Mr. Das appearing on behalf of the opposite party felt this difficulty, and hence he attempted to support the position taken up by the Munsif, viz., that the trees might be regarded as incumbrances within the meaning of Clause (3) of Section 26(F) and as such the landlord might be directed to make further deposits as contemplated by that clause. We are unable to accept that contention as correct. The term "incumbrance" has been defined in Section 161 of the Bengal Tenancy Act and though this definition was intended for purposes of Chap. XIV only, yet it might be looked at for ascertainment of the connotation of the term as used in other Sections of the Act. Even taking its purely etymological meaning, it connotes some hindrance or burden upon ownership, some subordinate interest charged upon or carved out of a parent estate, e.g., a lease, mortgage,

easement, etc., which always acts in limitation of the full rights of ownership in the property to which it appertains. Vide *Sheoraj Koer v. Dhani Mian* 3 Pat. 1 : 75 Ind. Cas. 794 : 4 PLT 581 : 1 Pat. LR 402 : (1923) Pat. 305 : AIR 1924 Pat. 1 (FB). It is true, as Air. Das contends that an occupancy raiyat has the right to fall and dispose of any tree standing on the land u/s 23(A) of the Bengal Tenancy Act, but that does not constitute an incumbrance or charge upon the land and this claim or right of the tenant to cut down or fell trees cannot be said to be a thing in derogation or limitation of his tenancy right. Mr. Das has also drawn my attention to a passage in the judgment of Mr. Justice Guha in *Abdul Hai Vs. Abdur Rahman and Others*, where it is said that the word incumbrance in Section 26(F) Clause (3) must relate to all that is appurtenant and include structures standing on the land which is the subject of the tenancy. In that case the value of the land and the structures were separately given in one part of the conveyance as Rs. 50 and Rs. 150, respectively; but the total consideration both in the kobala and the notice was put down as Rs. 200. Mr. Justice Guha held, and rightly in our opinion, that the structures which are really improvements within the meaning of Section 76 of the Bengal Tenancy Act, are to be regarded, as appurtenant to the holding, and the value of the holding must include the value of the structures as well. The observation referred to above was, therefore, really unnecessary and strictly speaking what is an improvement upon the holding cannot be regarded at the same time as an incumbrance upon it. The decision does not touch the present point and cannot be regarded as an authority against the petitioner in the case before us. Mr. Das has further placed before us certain instructions issued by the Registration authorities on March 26, 1931, for guidance, of the Registration Department, which contain the following provision:

Note (5): On the sale of an occupancy adding with crops or huts, etc., on it the registering officer should realise the landlord's fee only in respect of the price of the lands of the holding which are being transferred and not in respect of the crops or buildings which may be transferred with the land. If, however, a tenant sells his holding as well as his huts, etc., by the same document he should state separately the value of the holding and the value of the other properties.... When the value of the holding is shown separately, such value of the holding only will be shown; in the notice to be served on the landlord.

5. We need not say anything about the propriety of these instructions. It is enough to state that the Registration authorities had obviously in mind the huts or growing crops standing on the land which can be and are meant to be removed and enjoyed separately. In that case it is not necessary to state the value of these things in the notice, and the only result will be that the purchaser of the crops and structures would be entitled to remove them whereas the landlord would have the land itself on depositing its separate value together with the compensation as laid down bylaw. It is significant that the instructions do not mention "trees"- specifically and if it is intended that the trees should be enjoyed as part of the holding and would not be removed as timber, then the non-mention of the value of trees in the notice, would, in our opinion, preclude the

purchaser from claiming it from the landlord under Clause (2) of Section 26(F). In the present case, the petitioner does not object to the purchaser's removing the trees, and in our judgment he would be entitled to do so, though the trees being for the most part fruit trees, he is likely to derive little benefit by removing the same. We hold, therefore, that the view taken by the Munsif who has overlooked the provision of Section 26(F), Clause (2) of the Bengal Tenancy Act is not correct and his judgment should be reversed the petitioner will be entitled to pre-empt the land on deposit of the landlord's transfer fee paid by the purchaser within one month from this date. He will not have to deposit the sum of Rs. 150 as price of the trees. It would be open to the opposite party to remove the trees within one month from this date. The Rule is accordingly made absolute with costs hearing fee one gold mohur.

M.C. Ghose, J.

6. I agree.