
(1920) 05 PAT CK 0001

In the Patna High Court

Raja Kamaleshwari Prosad Singh

APPELLANT

Vs

Lala Jagar Nath Sahai and Others

RESPONDENT

Date of Decision : 04-05-1920

Acts Referred:

Contract Act, 1872 — Section 69

Citation : 56 Ind. Cas. 949

Hon'ble Judges : Das, J

Bench : Single Bench

Judgement

Das, J.—This appeal arises out of a suit instituted by the respondents for recovery of Rs. 539 from defendant No. 1. The lower Appellate Court has granted the plaintiffs a decree for the full amount claimed. The defendant No. 1 appeals.

2. The admitted facts are as follows : The plaintiffs and the defendants are co-sharers of a certain Mokarrari interest under the Banaily Raj. The defendant No. 1 has five-annas interest in the Mokarrari in two different capacities. He is the mortgagee in possession in respect of 3-annas share in the Mokarrari and he is also the purchaser of 2-annas share, his purchase having been effected on the 8th September 1909. The Raraily Raj brought a suit for recovery of rent for the years 1315 to 1318. Defendant No. 1 was not a party to the suit, although his purchase of the 2 annas interest was previous to the date of the institution of the suit. The Raj got a decree against the defendants second and third parties for Rs. 1,278-4 9. Defendants Nos. 6 and 7 paid Rs. 211-0-0 towards the satisfaction of the decree. The balance, namely, Rs. 1,067-4 9, was paid by the plaintiffs on the following dates, viz, Rs. 689 before the 7th April 1914, Rs. 200 on the 7th of April 1914 and Rs. 223 4 9 on the 18th of May 1914. The defendants, other than defendant No. 1, paid their proportionate share to the plaintiffs. The plaintiffs on the 5th of April 1917 instituted the present suit for recovery of Rs. 399-7-6, the proportion which ought to have been paid by defendant No.1, and Rs. 139-8-6 as the interest on Rs. 393-7-6, in all Rs. 539.

3. The first point urged on behalf of the appellant is that so far as his purchased

share is concerned, he was not bound by law to pay any portion of the rent decree obtained by the superior landlord and, therefore, the plaintiffs are not entitled to be reimbursed by him. I think this contention is correct. It will be remembered that the defendants' purchase was prior to the institution of the suit by the superior landlord. In my view, the superior landlord was not entitled to sell the tenure in the possession of defendant No. 1 in a suit in which defendant No. 1 was not a party. It is clear under the law that the consent of the landlord was not necessary to the transfer of title to defendant No. 1. From the date of his purchase defendant No. 1 was the tenant of the The superior landlord could only affect the tenure in the possession of defendant No. 1 in a properly constituted suit against defendant No 1. Section 13 of the Bengal Tenancy Act is conclusive on this point.

4. But it was argued on behalf of the respondents that before this argument can be advanced it must be shown that the superior landlord had notice of the purchase made by defendant No. 1. In my view, we must assume that everything which the Court was bound to do in pursuance of a statutory duty was in fact done in this instance. Section 13 provides that the Court, before confirming the sale under Order XXI, rule 92 of the Code of Civil Procedure, shall require the purchaser to pay into Court the landlord's fee prescribed by Section 12 of the Bengal Tenancy Act and such further fee for service of notice of the sale on the landlord as may be prescribed. The sale has in fact been confirmed and, therefore, I must assume that the fees required by the Court to be paid by the purchaser were in fact paid before the sale was confirmed. If these fees were in fact paid, then clearly it was the duty of the Court to send to the Collector the landlord's fee and a notice of the sale in the prescribed form and it was the duty of Collector to cause the fee to be transmitted to, and the notice to be served on, the landlord in the prescribed manner. These are statutory duties and I am bound to presume that these statutory duties were in fact performed.

5. If that be so, then clearly the landlord could not, by a decree obtained against the former tenant, affect the tenure in the hands of defendant No. 1. That tenure could only be affected by a decree for rent against the defendant No. 1 in a properly constituted suit against him. In my view, therefore, the defendant No. 1 was not bound by law to pay any portion of the rent decree obtained by the landlord in respect of the 2 annas share purchased by the defendant No. 1.

6. There still remains the question of the liability of defendant No. 1 in respect of five-annas share held by him as a mortgagee in possession. He was undoubtedly bound by law to pay his proportion of the decretal amount in respect of his 3-annas share. The plaintiffs, being interested in the payment of this money by defendant No. 1, have actually paid it and, if their suit is within time, they are entitled to be reimbursed by the defendant. It is urged, however, by the appellant that the plaintiffs' suit in regard to whatever they paid before the 5th of April 1914 is barred by limitation. This contention must prevail. It appears that the plaintiffs paid Rs. 639 before the 5th of April 1914. The suit for contribution,

therefore, with respect to this item should have been brought within three years from the date of payment. But it is contended on behalf of the respondents, a contention which has found favour with the lower Appellate Court, that the plaintiffs are entitled to take up the position that whatever they paid before the 7th of April 1914 must be deemed to have been paid on their own behalf and on behalf of the co-sharers other than the defendant No. 1. The argument is that the plaintiffs were entitled to recover from the defendant No. 1 Rs. 399, The plaintiffs have actually paid to the landlords, in satisfaction of his decree, more than Rs. 399 within three years of suit. Therefore they must be deemed to have paid the share of defendant No. 1 within three years, of suit and accordingly their suit is within time. I do not agree with this contention at all. In my view, every rupee paid by the plaintiffs must be deemed to have been paid on behalf of all the co-sharers. No question of appropriation arises in a suit for contribution u/s 69 of the Indian Contract Act. The plaintiffs' case is that they are interested in the payment of money which others were bound by law to pay. They have paid and are entitled to be reimbursed by the others. In my view, the plaintiffs must be deemed to have paid every portion of the money actually paid by them on behalf of all the co-sharers. In that view so far as Rs. 639 is concerned, they are not entitled to be reimbursed by defendant No. 1 in respect of the 3 annas share held by him as a mortgagee. Plaintiffs are, however, entitled to be reimbursed in regard to Rs. 428 4-9 paid by them within three years of suit. They are entitled to recover from defendant No. 1 the proportion which the defendant No. 1 ought to have paid to the plaintiffs in respect of his 3 annas share. Let the figure be worked out in office and the decree of the lower Appellate Court be modified accordingly. The parties are entitled to their costs in proportion to their success.