

(1933) 08 CAL CK 0014
In the Calcutta High Court

Raja Kirtyananda Singh Bahadur and Others

APPELLANT

Vs

Radha Benode Gupta

RESPONDENT

Date of Decision : 30-08-1933

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148A

Citation : AIR 1934 Cal 278

Hon'ble Judges : Nag, J; Jack, J

Bench : Full Bench

Judgement

Jack, J.—This appeal has arisen out of a suit for a declaration of the plaintiff's title to the land in suit and for confirmation of possession therein. The plaintiff's allegation was that the land was originally held by one Dayamayi. Dayamayi had a nephew named Sibcharan who had two sons Tarini and Annada. The plaintiff purchased the interest of Tarini, Dayamayi having bequeathed her interest to Tarini. At the survey and settlement operation in 1891-92 the land was recorded as being held by one Sibcharan. Defendants 1 and 2 claim that the land is within the ambit of their zamindari and in 1914 they instituted a rent suit against Tarini and Annada and got a decree. In execution thereof they purchased the land and took symbolical possession through the Court. The plaintiff now maintains that the decree obtained by defendants 1 and 2 was fraudulent and collusive and that the land had been held by himself and his predecessors Dayamayi and Tarini all along rent-free and that he is still in possession rent free and his right cannot be affected by the decree and the sale. The suit was decreed by both the Courts below as against defendants 1 and 2.

2. In this appeal it is contended that the suit should be dismissed for defect of parties and inasmuch as the property being within the ambit of the zamindari of defendants 1 to 5 and the suit having been dismissed against defendants 3 to 5, it was not maintainable owing to defect of parties against defendants 1 and 2 only. In the circumstances of the case I do not think that the suit should be dismissed owing to defect of parties. As pointed out by the Court of appeal

below, the rent decree was obtained by defendants 1 and 2 alone and they purchased the land in execution of that decree. Defendants 3 to 5 of course will not be bound by the decree that the plaintiff appears to have the right of a declaration that he is in possession of the land and that he is not liable to pay any rent to defendants 1 and 2, that is all he obtained in this suit in the absence of defendants 3 to 5 and that is all he can claim. The plaintiff certainly has not obtained a declaration of his Nishkar title as against the other defendants 3 to 5 and they will not be in any way bound by this decree. Under the provisions of Section 148-A, Bengal Tenancy Act, before the amendment, which is applicable to this case, the decree obtained by defendants 1 and 2 has the effect of a decree obtained by the entire body of landlords, only as regards the remedies for enforcing it. So that the effect of the decree obtained u/s 148-A is not to make defendants 3 to 5 necessary parties in the present suit. This matter was discussed at length when the Review Rule was decided.

3. The next point raised was that the onus was on the plaintiff to show that Dayamayi had an absolute estate. As regards this matter, in the first place, it has been pointed out that this is not a suit for ejectment or for establishment of any title except the right to possess the land rent free as against defendants 1 and 2 the plaintiff being admittedly in possession. It has been found that the predecessor of the plaintiff and the plaintiff have been in possession since Dayamayi's death in 1304 B. S.; the plaintiff having been in possession since 1315, they have been claiming lakheraj right in the land. It is also found that he and his predecessor never paid any rent for the land. So that even if it be held that the plaintiff's predecessor had no valid title in the land, the plaintiff appears to have established his right to hold the land free from rent by adverse possession. It is urged that the question of adverse possession was not taken in the trial Court and that the plaintiff should not be allowed to raise it at this stage. But we find that though relief was not claimed in the plaint on the ground of adverse possession it was stated in the plaint that plaintiff is holding the land adversely on a claim of lakheraj title for many years. In the circumstances I do not think that the defendants have been prejudiced by the fact that no issue was framed as to adverse possession in the trial Court.

4. Even if the onus be placed on the plaintiffs to establish the fact that Dayamayi had an absolute estate, the findings of fact seem to make it so probable that Daymayi held an absolute estate, as to amount to proof. The will was executed in 1304. Dayamayi died that year and although there were admittedly reversioners, no claim was made by any of them as against either the plaintiff or his predecessor. In the circumstances there can be no doubt that Dayamayi's interest was not merely a life interest. She might have obtained the property by gift from her husband or otherwise and there is no necessary presumption that her right was merely a life interest. Another point raised was that the decree for rent against Sib Charan was res judicata. But the finding is that that decree was obtained by fraud. In any case the lower appellate Court has found that it has not been proved that the defendant in that suit was Sib Charan, the nephew of

Dayamayi and the predecessor of the plaintiff. So that on this finding res judicata has not been established in this suit. The appeal therefore in so far as the plaintiff's claim to hold the land free from rent as against defendants 1 and 2, is concluded by findings of fact and this appeal is accordingly dismissed with costs.

Nag, J.

5. I agree.