
(1927) 06 CAL CK 0011
In the Calcutta High Court

Rajani Kanta Banerjee and Others

APPELLANT

Vs

Raj Kumari Dasi and Another

RESPONDENT

Date of Decision : 30-06-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Section 85
Registration Act, 1908 — Section 17(d)

Citation : AIR 1927 Cal 913

Hon'ble Judges : Rankin, C.J.; Mitter, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is a case in which the plaintiffs sued for ejectment after service of a notice to quit. The Munsif did not try any issue except the issue whether the plaintiffs were estopped from bringing the suit for khas possession. The lower appellate Court dealt with the same question only.

2. The facts are shortly these: That the father of the defendants sold the suit land and certain other lands forming a jama to the plaintiffs' predecessors. The latter got possession of all the lands except the lands now in question. Thereupon it is said that after the expiry of 12 years the plaintiffs brought a suit for recovery of these very lands against the defendants' father. That suit was settled by a solenama and the effect of the solenama was that the defendants' father admitted the right of the plaintiffs to get possession of these lands but it was agreed that the defendants' father should be a tenant to the plaintiffs at a Certain rent permanently. In that suit it may be mentioned that the claim of the plaintiffs was first of all for khas possession and, in the alternative, if that was not granted to them, for rent from the defendants' father. Now, in the present suit, the solenama containing the promise of the plaintiffs to let the defendants have these lands as tenants permanently, is set up as an answer to the plaintiffs' claim for khas possession and the learned vakil on behalf of the plaintiffs says that that solenama does not afford a defence because it was not registered as required by Section 17(d), Registration Act.

3. The first question, therefore, is whether that solenama requires registration as being a lease. There can be no doubt that the intention of it was to operate as the grant of a tenancy to take effect at once and in my judgment there is no escape from the conclusion that it was a lease. That being so there is no escape from the further conclusion that it is not exempt as being an order or a decree of the Court, from the requirement of registration because that requirement is only foregone on the face of Section 17, Registration Act, in cases coming within Clauses (b) and (c), Sub-section (1), Section 17. This was clearly held by the Privy Council in the judgment delivered by Lord Buckmaster in the case of Hemanta Kumari Debt v. Midnapur Zemindary Co. AIR 1919 P.C. 79.

4. Now, the present case is affected by the terms of Section 85, Bengal Tenancy Act which says:

a sub-lease by a raiyat shall not be admitted registration if it purports to create a time exceeding nine years.

5. There can be no doubt that the jama purchased by the plaintiffs and to which the plaintiffs' right was recognised by the solenama was a raiyati holding. In these circumstances it being contrary to the policy of the law that a sub-lease exceeding nine years should be made by a raiyat by a grant there can be no question of specific performance being called in to cure the absence of registration and such cases as Mahomed Musa v. Aghore Kumar Ganguli AIR 1914 P.C. 27, clearly afford no relief to the defendants.

6. In these circumstances, there is only one contention made on behalf of the defendants by way of further defence to the plaintiffs' claim for khas possession. It is said that whether or not this solenama was valid, the defendant has been in possession under it for a very long time paying the rent agreed upon by the solenama and, therefore, he being in possession claiming to have a permanent tenancy right, has under the decisions of this Court prescribed a limited interest and has a defence to the claim to khas possession. Now, that branch of the law has been considered by the Judicial Committee in more than one recent case. I would refer to the three recent cases. One is the case of Mahomed Mumtaz Ali Khan v. Mohan Singh AIR 1923 P.C. 118. Their Lordships say:

They are unable to affirm as a general proposition of law that a person who is, in fact, in possession of land under a tenancy or occupancy title can, by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been successfully challenged, obtain a title as an under-proprietor to the lands.

7. The next case Madhavrao Waman Saundal-Gehar v. Raghunath Venkatesh Deshpande AIR 1923 P.C. 205, is in "the same volume at p. 255, and there at p. 264, Sir John Edge delivering the judgment of their Lordships said this:

It is not necessary for their Lordships to decide in this case whether the answer of the Pull Bench, limited as it must have been in the case of a stranger to the

watan, setting up as a defence 12 years" adverse possession, was or was not correct, although they are constrained to say that it is somewhat difficult to see how a stranger to ,a watan can acquire a title by adverse possession for 12 years of lands, the alienation of which was, in the interests of the state, prohibited.

8. In the case of Nainapillai Marakayar v. Ramanathan Chettiar AIR 1924 P.C. 65, it was laid down by their Lordships that

No tenant of lands in India can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands.

9. The present is a case in which the defendants could not have been ejected by the plaintiff. It is quite true that the plaintiffs could have given notice to quit and thereby entitled themselves ex hypothesi to bring an action. The plaintiffs were not obliged to give notice to quit unless they wanted to do so. The result is that the plaintiffs were not in a position to get a decree for ejectment against the defendants. The defendant having a real right to be in possession, the mere additional fact that a claim was asserted to have an unlimited number of years in which their right to the lands would subsist is not a circumstance that enables them to prescribe a permanent tenancy as against landlords. There is no warrant for such doctrine in Section 28, Limitation Act, and it would appear from the decisions which I have cited that there is no validity in law in a case of this sort for any finding to the effect that there has been prescription of a right to a permanent tenancy. A case of estoppel is another matter.

10. These being the only points which were presented to us by the argument in this case it remains to direct that the appeal should be allowed. The decrees of the lower Courts are set aside and the case is sent back to the original Court for the determination of the issues which have been left undecided, that is to say, for the determination of issue 3 as regards the service of notice and, if necessary, issue 6.

11. The appellants are entitled to their costs in this Court.

Mitter, J.

12. I agree.