
(1922) 07 CAL CK 0068
In the Calcutta High Court

Rajendra Narayan Chaudhury

APPELLANT

Vs

Khan Bahadur Moulvi Abu Nasar Ahiya

RESPONDENT

Date of Decision : 18-07-1922

Acts Referred:

Citation : 71 Ind. Cas. 327

Hon'ble Judges : Walmsley, J;B.B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—This appeal is by the defendant No. 3 and it arises out of a suit for rent brought by the plaintiff under the following circumstances. One Abdur Rahman was the Zemindar of a certain estate. He granted a putni lease of the entire 16-annas of the property to the predecessor of the defendants sometime in 1881. Subsequently, one Bhuban Babu acquired an interest in 1-anna share of the Zemindary in 1895. After acquiring this interest, he created a putni in respect of this 1-anna share in favour of a lady Amatul Fatima Banu. Sometime after that, Bhuban Babu sold the interest of Amatul Fatima Banu under Regulation VIII of 1819 and it was purchased by the plaintiff. The plaintiff has now sued the defendants for rent of the putni to the extent of 1-anna share.

2. The defendant No. 3 alone contests the plaintiff's claim and he denies the relationship of landlord and tenant and contends that the plaintiff as acquired no interest in the property entitling him to recover rent from him as putnidar.

3. Both Courts below have given the plaintiff a decree for rent. The learned Subordinate Judge relies upon the case of Raj Kumar Majumdar v. Probal Chandra Ganguli 9 C.W.N. 656 for the proposition that it was open to Bhuban Babu to create a putni tenure over the head of the putni of the defendants.

4. It is contended before us by the appellant, first, that Bhuban Babu had no authority to create a second putni intervening between the defendant's putni and the Zemindar's interest and, secondly, that assuming that the putni lease granted in favour of Fatima Banu, the plaintiff's predecessor, amounted to an

assignment of the right of the Zemindar to recover rent from the defendants, such interest created in favour of Fatima Banu was not a putni lease as contemplated by Regulation VIII of 1819 and the sale held by the Collector tender that Regulation of the interest of Fatima Banu at which the plaintiff purchased was without jurisdiction and the plaintiff has acquired no interest whatever by virtue of it. The appellant points out that there are certain other cases which deal with this question and he refers to the cases of Madhu Sudan Chaudhuri v. Debendra Nath Sarkar 66 Ind. Cas. 200 : 34 C.L.J. 76 Nilambar Ghosh v. Mir Mbhasanuddin 67 Ind. Cas. 105 : 34 C.L.J. 77 Johar Mull v. Bhupendra Nath Basu 67 Ind. Cas. 108 : 34 C.L.J. 79 49 C. 495 : A.J.R. 1922 C. 412 and Jarrow Kuwari Saheba v. Hanifuddin Akanda 4 Ind. Cas. 471 : 14 C.W.N. 389.

5. With regard to the case of Raj Kumar Majumdar v. Probal Chandra Ganguli 9 C.W.N. 656 on which the Subordinate Judge relies, the learned Judges who decided that case speak very generally about the position of a person who accepts a putni over the head of another putni. They say this: The "creation of two putnis one above the other, no doubt, introduces confusion into the ordinary grades and nomenclature of sub-infeudation, yet for the purpose of this suit, all we hold is that the plaintiff's putni lease constitutes an intermediate tenure between the Zemindar and "the defendants and that, therefore, the plaintiff is entitled to demand the rent which the defendants are bound to pay to their superior landlord".

6. Apart from all authority, it would appear that the idea of a putni being created over another putni is absolutely foreign to the scheme of the Putni Regulation and any one familiar with the status of a putnidar would consider this position as anomalous. In the Putni Regulation, a putnidar has been given certain rights as against the Zemindar. The putnidar is described as a taluqdar of the first degree and it is difficult to imagine that a tenure can be created over a taluqdar of the first degree. There can, however, be no objection to the assignment of the right of the Zemindar to receive rent from the putnidar which he is entitled to get under the Putni Settlement; for example, he may create an ijara or he may execute a mortgage and make over possession to the mortgagee. In such cases, the assignee of the Zemindar's interest would be entitled to recover rent from the putnidar by virtue of the assignment. This position seems to have been made clear in the case of Madhu Sudan Chaudhuri v. Debendra Nath Sarkar 66 Ind. Cas. 200 : 34 C.L.J. 76 where Mr. Justice Caspersz says that the name given to the assignee of the Zemindar's interest to recover rent is immaterial. The case of Johar Mull v. Bhupendra Nath Basu 67 Ind. Cas. 108 : 34 C.L.J. 79 49 C. 495 : A.J.R. 1922 C. 412 does not really touch the question. That is a case in which the defendant claimed a mukarari interest and the plaintiff sued for rent as a superior lessee under a lease creating a superior title over the mukararidar, and it will be noticed that, in that case, the learned Judges are equally guarded in their language as to the creation of a putni interest over another putni. In those cases, however, the plaintiff could recover rent on the basis of a title derived from the Zemindar as assignee of the interest of the Zemindar to recover rent

from the putnidar. But in the present case, the position seems to be somewhat more complicated and one of the complications contemplated in the case of *Raj Kumar Majumdar v. Probal Chandra Ganguli* 9 C.W.N. 656 has taken place. The Subordinate Judge finds that Bhuban after his purchase ignored the putni of the defendants and granted a new putni to Fatima Banu. Therefore, the interest which was created in favour of Fatima Banu by Bhuban was on the same plane as that of the defendant. It would appear, therefore, that Fatima Banu's interest was not superior to that of the defendants. Then, the question comes whether, assuming that it was superior interest, this could be sold Under Regulation VIII of 1819. The Collector assumed jurisdiction for the purpose of sale under that Regulation, as the lease created in favour of Fatima Banu does not mention that the interest created in her favour was an interest between the putnidar and the Zemindar. The Regulation does not contemplate the sale of such an interest under its provisions and, if it had-brought to the notice of the Collector that Fatima s interest was not that of an ordinary putnidar but that of one above a putnidar, the Collector surely would not have put the provisions of the Regulation in force to effect the sale, as the Revenue Authorities do not recognise such a putni. The question, therefore, is whether the plaintiff has acquired any interest by such sale. Reference has been made on behalf of the respondent to the case, of *Ramsona Choudhurani v. Nabakumar Sinha* 10 Ind. Cas. 90 : 13 C.L.J. 404 : 16 C.W.N. 805 in support of the proposition that a sale under the Regulation can only be questioned by a person entitled to do so u/s 14 of the Regulation and that the title of the purchaser under the Regulation sale cannot be questioned collaterally. But the learned Judges in that case observed that the sale must be held with jurisdiction, and the sole question in the present case is whether the Collector had jurisdiction to sell the interest of Fatima Banu under Regulation VIII of 1819. As has been contended by the learned Vakil for the appellant, the defendants do not come under the category of persons who could sue u/s 14 of the Putni Regulation for setting aside the putni sale. If they had brought such a suit, the obvious answer would have been that they were not affected by the alleged, sale and that they had no right to dispute it, nor could any person claiming under the defendants as dur-putnidar or a taluqdar of the third degree known as se-putnidar have questioned the sale. If it were held that the interest of Fatima Banu was such as could be sold under Regulation VIII of 1819, serious complications would arise in the relation between the putnidar and the Zemindar on the one hand and the subordinate tenure-holders on the other. It seems to me that the whole scheme of the Putni Regulation is that the putnidar is the only person, whose interest can be sold under the Regulation and not the interest of a person in the position of Fatima Banu by whatever name it may be called The mere giving of the name of putni to the interest of Fatima would not n lake it a putni as contemplated by the Regulation so as to bring into play all the provisions of the law. In my opinion, therefore, the sale under Regulation VIII of 1819 at which the plaintiff purchased was without jurisdiction and the plaintiff has acquired no title. Then, again, the intention of Bhuban Babu was to grant a new putni ignoring the putni of the defendants, as found by the Subordinate

Judge, and it would appear that the interest created in favour of Fatima Banu was co-ordinate with that of the defendants. In this view, Fatima Banu cannot be said to have acquired any interest as against the defendants. In my opinion, the plaintiff has no right to recover rent from the defendants and the relationship of landlord and tenant does not exist between the parties.

7. The appeal must, therefore, be allowed and the suit dismissed with costs in all Courts.

Walmsley, J.

8. I agree.