

(1954) 01 CAL CK 0034
In the Calcutta High Court
Case No : A.F.A.D. No. 1256 of 1948

Raju Singh and Others

APPELLANT

Vs

Nagendra Nath Haldar and Others
 Nagendra Nath
Haldar and Others Vs Raju Singh and Others

RESPONDENT

Date of Decision : 06-01-1954

Acts Referred:

Bengal Tenancy Act, 1885 — Section 22, 22(3)
Transfer of Property Act, 1882 — Section 111

Citation : AIR 1954 Cal 219 : (1956) 1 ILR (Cal) 419

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : Nitya Ranjan Biswas and Haripada Sarkar, for the Appellant;
Brajendra Nath Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—This appeal arises out of a suit for rent and the defendants are the appellants before me. The tenancy in question is an under-raiyati one. That tenancy was held under another under-raiyat Dharmadas whose under-raiyati was recorded under the raiyat Bama Sundari. Bama Sundari, however, granted an ijara to the plaintiff whereby in view of the terms of that ijara the plaintiff himself became an under-raiyat. The resultant position, there-fore, was that Bama Sundari was the raiyat, the plaintiff was the under-raiyat of the first degree, Dharmadas was an under-raiyat of the second degree and the defendants were under-raiyats under Dharmadas. The plaintiff's ijara expired in 1349 B.S. but, before that, in execution of a decree for rent he had acquired the interest of Dharmadas, viz., his under-raiyati which was also with occupancy rights.

The present suit for rent was for the period 1350 to 1353 B.S., i.e., for a period subsequent to the date of expiry of the plaintiff's ijara. It was accordingly contended by the defence that the plaintiff was not entitled to the rents of this

period, the ijara having expired and the acquisition of Dharmadas's interest by the plaintiff also giving him no better position inasmuch as, under the law, according to the defendants, that interest had merged with the plaintiff's ijara and expired along with it. The trial court gave effect to this defence contention and dismissed the plaintiff's suit. On appeal that decision has been reversed by the learned Subordinate Judge who has expressed the view that in the present case there was no merger in law, of the Korfa or under-raiyati interest of Dharmadas acquired by the plaintiff with the latter's ijara. Against this appellate decision, the present appeal has been preferred by the defendants,

2. The only question which calls for decision in this case is whether upon acquisition by the plaintiff or Dharmadas's under-raiyati right that interest merged with the plaintiff's ijara right with the necessary consequence, that the plaintiff lost this acquired interest also with the expiry of his ijara lease. In my opinion, the lower appellate court is right in holding that there has been no merger in the present case so as to disentitle the plaintiff from asserting the under-raiyati interest acquired by him as aforesaid or from claiming rent from the defendants on the strength of that interest.

The plaintiff undoubtedly held a temporary ijara settlement from the raiyat Bama Sundari and during the subsistence of that ijara and on the strength of that ijara lease he brought the rent suit against Dharmadas in execution of the decree wherein he purchased Dharmadas's under-raiyati interest. That, however, did not necessarily enact a merger of the two interests which vested in the plaintiff upon such acquisition, viz., the under-raiyati interest of Dharmadas and the plaintiff's own ijara interest. It is practically well settled that in the mofussil in this country the broad English law of merger does not apply and, generally speaking, the law of merger is contained in Section 111(d) of the Transfer of Property Act and Section 22 of the Bengal Tenancy Act. It may be, as it has been held in some cases, that the theory of intention or the theory of benefit may lead to an inference of merger in the circumstances of a particular case. However, neither of the two theories would assist the defendants here by raising an inference of merger.

It is quite clear from one of the exhibits in the present case, viz., Ext. 1, that the plaintiff after his auction purchase of Dharmadas's interest kept it quite distinct from his own ijara interest. It is also clear that the doctrine of merger, if applied to this case, would be not to the benefit of the plaintiff but against his interest. In such circumstances, neither the theory of intention nor the doctrine of benefit can be invoked to infer merger in the present case.

Mr. Eiswas relied, very strongly on Section 22(3) of the Bengal Tenancy Act. It is obvious, however, that that section can have no application here. That section prevents an ijaradar or a farmer of rents from holding the land as a raiyat. Apart from the fact that it occurs in a chapter dealing with raiyats, viz., chapter V and no corresponding provision is to be found in the chapter dealing with under-raiyats viz., Chapter VII, Section 48G(2) of the Act which extends some of the

provisions of the Act applying to raiyats to under-raiyats expressly excludes Section 22. It is also quite clear that the Act makes a distinction -- a clear distinction -- between a raiyat and an under-raiyat. Section 22(3), therefore, which merely prevents a farmer of rents from holding the land as a raiyat cannot be invoked to disentitle an ijaradar from holding the land as an under-raiyat. That being so, the contention of Mr. Biswas, based on Section 22(3) of the Act also cannot be accepted.

3. In the result, therefore, the decision of the lower appellate court holding that there has been no merger in the present case disentitling the plaintiff from claiming rents from the defendants must stand and this appeal must necessarily fail. It is, accordingly, dismissed with costs.