
(1943) 04 CAL CK 0005
In the Calcutta High Court

Ram Krishna Bhattacharya and Others	APPELLANT
Vs	
Badri Narayan Chetlangia, the Ward of Chetlangia Ward's Estate through Manager Kartick Pada Ghose	RESPONDENT

Date of Decision : 20-04-1943

Acts Referred:

Public Demands Recovery Act — Section 34

Citation : AIR 1943 Cal 531

Hon'ble Judges : Biswas, J

Bench : Division Bench

Judgement

Biswas, J.—This is an appeal on behalf of the plaintiffs in a suit which they instituted u/s 34, Public Demands Recovery Act, for cancellation or/and modification of a certificate for the recovery of certain alleged arrears of rent. The suit was dismissed by both the Courts below. The facts were briefly these : One Srikanta Mukherji was the owner of a 1 anna 10 gandas share in a taluk appertaining to tauzi No. 15 of the Nadai Collectorate. In the year 1274 B.S. (1808) he granted a patni in respect of his share in the touzi to one Tarini Prosad Ghose, and both the patta and the kabuliat by which this settlement was created are exhibits in the case, Ex. 1 being the patta and Ex. A the kabuliat. The zemindar's interest was subsequently acquired by one Badrinarayan, whose estate was taken charge of by the Court of Wards. The patnidar's interest was also transferred being purchased by a lady Sm. Santisudha Devi, since deceased. Plaintiffs 1 to 4 are her sons and plaintiffs 5 to 7 are her daughters. It is their case that the property was purchased by their mother with her jautak stridhan, so that on her death it passed to the daughters only, to the exclusion of the sons.

2. It appears that under the terms of the patni lease, the patnidar undertook to pay the Government revenue in respect of the touzi direct to the Collector on behalf of the zemindar. The main question which arises in this appeal is whether the sum which was thus payable by the patnidar to the Collector can be regarded as rent. The certificate g which was called in question in this suit was filed u/s 6

on a requisition by the Manager of the Court of Wards as representing the zemindar's estate, and it was filed in respect of the amount which was payable under the terms of the patni lease on account of revenue. The claim included interest alleged to be due on such amount under the patnipatta. The parties, named as the certificate debtors, included both the sons and daughters of Sm. Santisudha Devi. One of them, plaintiff 7, was admittedly a minor at the time, but she was represented in the certificate proceedings by her father as nah tural guardian instead of by her husband who was her legal guardian. Upon these facts the plaintiffs contended, and the contentions were renewed before me in this appeal : (1) that the demand in question was not a public demand within the meaning of the Act, and that consequently the certificate was not a certificate duly filed under the Act; (2) that plaintiffs 1 to 4 were not answerable for the demand at all in so far as they had no interest in the patni; (3) that plaintiff 7 was not properly represented in the proceeding and she could not accordingly be made liable; and (d) that no interest was due in respect of the amount claimed on account of rent.

3. I shall take up these points in the order in which they have been stated. As regards the first point, the argument is based on a construction of the patni lease. Section 3(6), Public Demands Recovery Act, defines pub. lie demand to mean any arrears or money mentioned or referred to in Schedule 1 and includes any interest which may by law be chargeable thereon up to the date on which the certificate is signed under Part II. Article 8 of Schedule 1 provides that in the case of property which is under the charge of or is managed by the Court of Wards on behalf of a private individual, a public demand is an "arrear of rent" or of any demand which is recoverable as "rent." It follows, there, fore, that unless the demand in the present case could be regarded as an arrear of rent, no requisition could be filed u/s 5 of the Act, in respect thereof. The contention on behalf of the appellants is that on a con. struction of the patni lease the amount which the patnidar bound himself to pay direct to the Collector on behalf of the land-lord on account of revenue was revenue and not rent, and in support of this contention reliance is placed upon a number of decisions of this Court and a decision of the Judicial Committee. The learned District Judge, however, was inclined to think that these cases did not apply, but that the matter was governed by some other decisions which he has quoted in his judgment.

4. In all the cases cited on the one side or the other, it will be seen that the question. has been held to depend on the actual terms of the lease before the Court. It is necessary, therefore, to examine the provisions of the patni patta here. There can be no doubt that the annual patni jama is expressly stated in the patta to be Rs. 340-11-9 pies, and that this sum includes the amount of I proportionate revenue which is stated to be due in respect of the zemindar's 1 anna 10 gandas share in the touzi. This last mentioned amount is Rs. 240-14-9 pies, and the case contains a distinct clause that the sic should pay it direct to the Collector on behalf of his landlord and thereafter produce before his landlord the duplicate challans from the Collectorate in token of such payment. So far as

the zemindar is concerned, he is to receive only the balance of KB. 100 out of the patni rent which will be left over after the Government revenue is discharged in the way stated. At the end of the document, provision is made for payment of the patni rent in instalments, but these instalments are not instalments of the aggregate patni jama mentioned in the lease, but refer only to the net sum of Rs. 100 which is payable to the zemindar. The learned advocate for the appellants argues that notwithstanding the mention of the aggregate sum of Rs. 340-14-9 pies, there can be no doubt that the patta contains two distinct and separate covenants, one for the payment of a part of this sum to the Collector on account of proportionate revenue of the mahal and the other to pay the balance to the zemindar direct. It is further pointed out that the patta itself lays down a special mode of enforcing the first covenant in so far as it provides that in case of default on the part of the patnidar to pay the Government revenue as stipulated and consequent sale of the estate for arrears, the patnidar will be liable in damages to the zemindar. Stress is further laid on the fact that the provisions for the payment of interest on arrears in default of payment by the due date relate expressly to the sum of Rs. 100, showing (so the argument runs) that the sum payable to the Collector is treated as some-thing distinct from the sum which is payable to the zemindar.

5. In this view of the matter, it is contended that the case comes within the ruling of the Judicial Committee in *Jotindra Mohan Tagore v. Bibi Jarao Kumari* 33 Cal. 140 and the decision in *Hemendra Nath Mukherjee v. Kumar Nath Ray* ('05) 32 Cal. 169. The learned District Judge thought that these cases were distinguishable, and relied on two other cases which according to him were much nearer the present one. One of these is the case in *Gour Gopal sinha v. Gosta Behari Pramanik* ('16) AIR 1916 Cal. 410 and the other *Jnanada Sundari Chowdhurani v. Atul Chakravarti* ('05) 32 Cal.972.

6. Having considered these cases and the terms of the engagement between the parties, I think I must give effect to the appellants contention. Apart from the fact that the aggregate of the two sums payable under the lease is stated to be the patni jama, I do not think that there is anything else in the document which shows that both the amounts are intended to be treated in the same manner. It is quite true that the whole amount is payable for the use and occupation of the land, but there can be no doubt that the lease contemplates the payment of the two distinct sums to two distinct parties. There is no obligation created by the lease for payment of the amount due on account of revenue to the zemindar. The only amount that is made payable to him is the munafa of Rs. 100. In my opinion, it is this latter sum and not the other amount that can be called rent, I see very little to distinguish this case from the case in *Hemendra Nath Mukherjee v. Kumar Nath Ray* ('05) 32 Cal. 169. In that case there were words in the kabuliat which seemed to suggest that the whole of the amount payable under its terms was rent. There was a distinct provision that if there was default on the part of the lessee to pay the rent due by the lessors to his superior landlord, the lessor would be entitled, to bring a suit against the lessee for arrears of rent. All

the same, it was held that this was not sufficient to show that the amount due by the lessor" to the superior landlord was rent. In the present case, as already stated there is no obligation on the part of the patnidar to pay the amount apportioned as revenue to his lessor. The obligation is only to pay it to the Collector, and it is expressly provided that if this obligation is not performed, the remedy will be by way of a suit for damages and compensation. This, to my mind, shows clearly that default in respect of payment of this amount is not to be enforced in the same way as default in the payment of the munafa.

7. On a true construction of the lease, it seems to me that what the parties intended was first to create a tenancy between them in consideration of the total sum therein mentioned, but this total sum was split up into two portions, only one of which was made payable by the tenant to the landlord, and as regards the other, the tenant merely accepted an obligation to pay, not to the landlord, but to someone else to whom it was due from the landlord. This latter sum was doubtless a part of the consideration for the tenancy, but it was not part of the rent which was payable in respect of the tenancy, rent being what is payable by the tenant to the landlord. The stipulations regarding the instalments as well as the payment of interest on such instalments are, in my opinion, pointers in the same direction. There is no reason why if either of the two sums was equally intended to be rent interest should run only in respect of one of them. The instalments should in that case also have included the portion payable on account of revenue.

8. As regards the cases relied on by the learned District Judge, it will be seen that in *Gour Gopal sinha v. Gosta Behari Pramanik* ("16) AIR 1916 Cal. 410, the Court proceeded on the view that the amount, though payable into the hands of the Collector, was intended to be paid on account and to the credit of the landlord, and that, therefore, it was rent paid to the landlord. In the other case 32 Cal 972, the terms of the jama were not before the Court, but it was assumed that for convenience's sake it was arranged between the parties that the tenants should pay the landlord's dues to Government for the landlord and that this might have been made payable to the landlord direct. I think that reading the patta here as a whole, it is difficult to avoid the conclusion that a distinction was clearly intended between the two different sums, in respect of which a liability was imposed on the patnidar. The liability in one case was to the zemindar, and in the other to the Collector on behalf of the zemindar. It is not necessary to consider whether on the strength of this document the Collector could enforce the liability which was created in his favour. Whether that could or could not be done, the covenant creating the liability was certainly one which could be enforced by the zemindar, but the mode of enforcing it was different from that in which he could enforce the obligation in respect of the other sum. The first point urged by the appellant must, therefore, succeed, and this is sufficient to dispose of the appeal. All the same, I may express my opinion on the other questions raised in the appeal.

9. The second point which Mr. Rakshit urged was that as the patni had been acquired by Sm. Santisudha Devi with her jautuk stridhan, it descended, on her death, to her daughters, plaintiffs 5 to 7, and that plaintiffs 1 to 4, her sons, got no interest in it. If the facts are as alleged by him that must be the correct position. Unfortunately, this point has not been investigated. The learned District Judge seemed to think that the point had not been pressed before the certificate officer in the petition u/s 9 which, the plaintiffs had filed denying their liability under the certificate and that that was an end of the matter. I am not quite sure that that was a correct view to take. Even if the point had not been pressed before the certificate officer on the hearing of the petition u/s 9, I do not think that would debar the plaintiffs from raising it afresh before the Court. All that Section 34, Public Demands Recovery Act, requires is that no suit shall be entertained under this section, if the certificate debtor failed to state in his petition u/s 9 the grounds upon which he based the suit. There can be no doubt that this particular ground had been stated by the plaintiffs in their petition u/s 9, and the matter should, therefore, have been gone into in the present suit. As regards the third point, namely, that plaintiff 7 was not duly represented, there is practically no answer to this, if, in point of fact, the daughter was actually married at the time the certificate was filed. This, again is a question of fact, and if she was married, there can be no doubt that her husband and not her father was the proper guardian to represent her.

10. The fourth point relates to interest. As I have already indicated, the patni lease itself shows that interest was payable only in respect of the inunafa of Rs. 100, the amount which was to be paid direct to the zamindar, and not in respect of the sum which the patnidar undertook to pay to the Collector. The claim for interest could not accordingly be included in the demand, even if the demand could be regarded as rent. I think the plaintiffs, are, therefore, entitled to succeed on all the points urged. The result is, in my opinion, the appeal must be allowed and the judgments and decrees of the Courts below set aside and the suit decreed. As there is no appearance on behalf of the respondents, there will be no order for costs in favour of the appellants.