

(1958) 01 CAL CK 0007
In the Calcutta High Court
Case No : Appellate Decree No. 1364 of 1953

Ramgopal Biswas

APPELLANT

Vs

Bhaloo Mandal

RESPONDENT

Date of Decision : 16-01-1958

Acts Referred:

Bengal Tenancy Act, 1885 — Article 3
Limitation Act, 1963 — Article 142
Specific Relief Act, 1963 — Section 9

Citation : (1959) 1 ILR (Cal) 312

Hon'ble Judges : Renupada Mukherjee, J; Banerjee, J

Bench : Division Bench

Advocate : Manindra Nath Ghosh, Samarendra Nath Banerjee and Manohar Dhali, for the Appellant; Hemendra Chandra Sen, Satyendra Chandra Sen and Chandra Sekhar Bhowmik, for the Respondent

Judgement

Renupada Mukherjee, J.—The only substantial question of law which arises in this appeal is whether the possession taken by a landlord of a raiyati or under-raiyati holding on the basis of an invalid surrender amounts to dispossession within the meaning of Article 3 of schedule III of the Bengal Tenancy Act entitling the landlord to claim the benefit of the special law of limitation provided therein. In order to appreciate how this controversial question of law has arisen it is necessary to state the following facts as also the findings of the courts below in brief.

2. The case as made out in the plaint was as follows. The disputed land described in the schedule of the plaint appertained to a raiyati holding of one Taluk Mondal bearing a rent of Rs. 51-7 as. under a tenure of one Bhalu Mondal,, the original Plaintiff of the trial court who died during the pendency of the second appeal in this Court and who has been substituted by his heirs, the present Respondents. Taluk was succeeded by three sons, Rajabali, Fazarali and Nilmoni, and a daughter Panchi Bibi. Eajabali died leaving some minor children as his heirs, and Fazarali died leaving a widow and some minor children. After the death of these

two sons of Taluk Mondal, the holding of Rs. 51-7 as. was surrendered by all the tenants towards the latter part of 1345 B.S. and Bhalu Mondal entered into possession of the above holding and continued to possess all the lands of the holding, but the Defendants dispossessed him from a part of the holding, viz., C.S. Day 84 of Khatian 94 of Mouza Srimantapur in Asar 1356 B.S.

3. The Defendants denied the surrender and also challenged its validity and contended that they had taken settlement of the disputed land from some of the heirs of Taluk Mondal while they were in possession of the disputed land and they had never dispossessed Bhalu Mondal.

4. Upon these allegations and counter allegations the courts below concurrently found that the surrender had in fact been made by the heirs of Taluk Mondal towards the latter part of 1345 B.S. after the death of two of the sons of Taluk Mondal, viz., Eajabali and Fazarali. The courts below further found that the landlord Bhalu Mondal entered into possession of the disputed land along with the other lands of Taluk Mondal on the strength of the above surrender, and he was dispossessed by the Defendants-Appellants in Asar, 1356. B.S. The courts below held at the same time that the surrender was invalid so far as the minor heirs of Rajabali and Fazarali were concerned, because the surrender could never have been legally made on their behalf by the other tenants of the holding. The courts below, however, decreed the suit of the Plaintiff holding that the possession of the landlord amounted to dispossession of the entire body of tenants including the minor tenants against whom the surrender was invalid, and that the right, title and interest of the minor tenants had been extinguished by the operation of Article 3 of schedule III of the Bengal Tenancy Act.

5. The concurrent finding of fact arrived at by the courts below that there was a surrender on behalf of the entire body of tenants is not liable to be challenged in this second appeal. We affirm that finding. It was not, however, questioned by Mr. Sen who appeared on behalf of the Respondents that the surrender was invalid to the extent of the interest of the minor heirs of Rajabali and Fazarali. The question, therefore, which arises is whether the entry of the landlord on the disputed land on the basis of the invalid surrender would amount to dispossession by the landlord within the meaning of Article 3 of schedule III of the Bengal Tenancy Act. This question has been answered by the courts below in the affirmative, and so the Defendants of the trial court have preferred this second appeal, questioning the legality of that finding.

6. Mr. Ghose appearing on behalf of the Defendants-appellants has contended that the view taken by the courts below is erroneous in law and that a surrender made by a tenant is a mere discontinuance of his possession and such discontinuance of possession cannot be regarded as dispossession by the landlord even though the discontinuance of the tenant's possession is immediately followed by the possession of the landlord.

7. In support of the above contention Mr. Ghose relied on a, case, Rakhal Das v.

Kshirode Bandhu Nandi (1929) 51 C.L.J. 36. In that case the mother of a minor Plaintiff sold some raiyati land to a co-sharer landlord in her personal capacity and on the basis of such sale which was not binding on the minor who was the real owner of the property, the landlord entered into possession of the land. It was held that the entry of the landlord on the discontinuance of possession by the Plaintiff is not such dispossession as would attract the operation of Article 3 of schedule III of the Bengal Tenancy Act. This case is no doubt somewhat different from the facts of the present case, but I am of opinion that the principles laid down in this case are well applicable to the present case, because in both the cases the landlord took possession of the raiyati holding after the tenants had voluntarily discontinued their possession. If we are to follow the case of Rakhal Das (supra) and if we do not dissent from that case, then we must hold that a case of the present description does not come within the purview of Article 3, schedule III of the Bengal Tenancy Act.

8. Mr. Sen appearing on behalf of the landlords-Respondents submitted that the abovementioned case no doubt supports the present contention of the Appellants in a large measure, but he contended that this is practically a solitary case in support of the contention raised in this appeal on behalf of the Appellants, and as the correctness of the decision is open to criticism, we should differ from this case and refer the matter to a Full Bench of this Court. Mr. Sen argued that by whatever means a landlord might enter into possession of a raiyati or under-raiyati holding, his possession must be regarded as dispossession of the tenant, because the legal and physical effect of possession by the landlord is ? dispossession of the tenant. I am not satisfied with the correctness of this proposition of law enunciated by Mr. Sen, because the expressions "entry into possession" and "dispossession" are not convertible or interchangeable. The word "dispossession" connotes some kind of action, direct or indirect, on the part of the person who takes over possession and it also implies the driving out of the person who is dispossessed.

9. The word "dispossession" has not been used in Article 3 of schedule III of the Bengal Tenancy Act in any special sense. The meaning of the word "dispossession" has been given in Webster's Dictionary as the "act of dispossessing", and the meaning of the word "dispossess" has been given as follows:

To put out of possession: to deprive of the actual occupancy of, particularly of land, or of real estate.

10. Evidently, therefore, the word "dispossession" does not cover a case where a tenant goes out of possession of his own accord and his discontinuance of possession is followed by the entry of another person.

11. The above meaning of the word "dispossession" has been accepted in some other cases of this High Court. In two of these cases, viz., Brojendra Kishore v. Abdul Razac (1915) 22 C.L.J. 283, and Panchoo v. Jajneswar (1920) 32 C.L.J. 9,

in which judgment was delivered by Sir Ashutosh Mookerjee. It has been held that the term "possession" implies the coming in of a person and the driving out of another person. One of these cases was, no doubt, a case under Article 142 of schedule I of the Limitation Act, but the other case, viz., the case *Panchoo v. Jagnesivar*, was a case under Article 3 of schedule III of the Bengal Tenancy Act. Similarly R.C. Mitter J. interpreted the word in the following manner in a case *Abdul Latif v. Nawaj Khajeh Habibulla* (1938) 69 C.L.J. 28.

Dispossession signifies expulsion, an adverse act which has the effect of putting out. It presupposes physical contact, a collision, either with another person or with his physical acts. The physical presence on the property of the person affected is not necessary, but the adverse act of the other party must have the quality of destruction.

12. It is also significant that while in Article 142 of schedule I of the Limitation Act both the expressions "discontinuance of possession" and "dispossession" have been used, it is only the latter word which has been used in Article 3 of schedule III of the Bengal Tenancy Act.

13. Accepting the judicial interpretation of the word "dispossession", as given in the above mentioned cases, I must hold that if a landlord enters into possession of a raiyati or under-raiyati holding on the basis of an invalid surrender, the entry of the landlord does not amount to dispossession of the tenant within the meaning of Article 3 of schedule III of the Bengal Tenancy Act,

14. The above meaning of the word "dispossession" appears to have been accepted in several English decisions of which I may mention only two. One of these decisions is the case of *Rains v. Buxton* (1880) 14 Ch. D. 537 in which it has been observed by Fry J. as follows:

In my view, the difference between dispossession and the discontinuance of possession might be expressed in this way-the one is where a person comes in and drives out the others from possession, the other case is where the person in possession goes out and is followed into possession by other persons.

15. The other English case is the case of *Little dale v. Liverpool College* (1900) L.J. 69 Ch. D. 87. The following observations from this report are relevant for our purpose:

Dispossession involves an animus possidendi with the intention of excluding the owner as well as other people.

16. On the authority of the above mentioned cases of our High Court as well as on a consideration of the explanation of the word "dispossession" as given in the two English decisions cited above, and also in view of the dictionary meaning of the word, I am of opinion that when a landlord of a raiyati or under-raiyati holding takes over possession of any land of the holding on the basis of an invalid surrender, he does not dispossess the tenant within the meaning of Article 3 of schedule III of the Bengal Tenancy Act. This being my view, I am of opinion

that the interest of the minor heirs of Rajabali and Fazarali could be extinguished by the possession of the superior landlord for a continuous period of twelve years and not two years, as has been found by the courts below. In this case the possession of the landlord was for less than 12 years. I must, therefore, hold that the interest of the minor heirs of Rajabali and Fazarali subsisted when the Defendants-Appellants took lease from them. The Respondents are not, therefore, entitled to have their title declared to the extent of the interest of the minor heirs of Rajabali and Fazarali who were not bound by the surrender.

17. The above finding is sufficient for the purpose of disposal of the present appeal. Mr. Sen, however, contended on behalf of the Respondents that the surrender was good and valid in so far as it related to the interest of the tenants who were major at the relevant time, viz., the time of surrender and so his clients are entitled to a partial decree. A further question therefore, arises whether a surrender made by a raiyat or an under-raiyat under the Bengal Tenancy Act can be partly valid and partly invalid. The lower appellate court has considered this question and recorded a finding that such a surrender can be partially valid. Mr. Ghosh, appearing on behalf of the Appellants, challenged the correctness of this view and contended that a surrender must stand or fall in its entirety. We need not decide this question in the present appeal for the following reasons. It being my view that the surrender was invalid at least to the extent of the interest of the minors, and there being absolutely no evidence on the record to show the quantum of interest of the major tenants, it is not possible to pass any decree in favour of the Respondents for joint possession in this suit, assuming that they did acquire a fractional title to the disputed property by virtue of the surrender. We, therefore, leave that question open in this appeal.

18. In view of my foregoing observations I must hold that the appeal should succeed. The appeal is accordingly allowed and the judgments and decrees of the courts below are hereby set aside. The suit of the Respondents do stand dismissed in the trial court.

19. Having regard to the circumstances of this case I direct that the parties will bear their own costs throughout.

Banerjee, J.

20. I agree with my Lord that this appeal should be allowed; but since an interesting point of law has been raised in this case, I desire to add a few words of my own.

21. The main point, argued by Mr. Ghosh in support of the appeal, is whether the law of special Limitation, under Article 3 of schedule III of the Bengal Tenancy Act, applies when there is no dispossession by the landlord, but only discontinuance of possession by the tenant.

22. The aforesaid point arises in the present case in the following circumstances:
The disputed land formerly belonged to one Taluk Mondal, who used to hold the

same at a rental of Rs. 51-7 as. per annum, under landlords Durgapada Chakravarti and others. The Plaintiff obtained a lease of the interest of Durgapada Chakravarti and thus became entitled to rent payable by Taluk Mondal. Taluk Mondal died leaving three sons Fazarali, Rajabali and Nilmoni and a daughter Panchi Bibi. Thereafter Fazarali and Rajabali died leaving certain heirs, who were mostly- minors at the relevant time.

23. The Plaintiff's case was that in the year 1345 B.S. Nilmoni, Panchi Bibi and the heirs of Fazarali and Rajabali surrendered the tenancy and he went into possession also in the year 1345 B. S. Thereafter, he was dispossessed by Defendants Nos. 1 to 4 in the year 1355 B.S. The Plaintiff's possessory suit u/s 9 of the Specific Relief Act failed, and thereupon the suit, out of which this appeal arises, was filed claiming declaration of title to and recovery of possession of the entire holding.

24. The defence, in substance, was a denial of the surrender alleged and a claim of title through settlement taken from the heirs of Fazarali and Rajabali and others.

25. The learned Munsif came to the conclusion that there was surrender in fact, but as most of the heirs of Fazarali and Rajabali were minors at the time of surrender, the same was not a, legal and valid surrender of the tenancy. He, however, decreed the Plaintiff's claim on the finding that title of the original tenants Nilmoni and Panchi Bibi and also of the heirs of Fazarali and Rajabali had been extinguished under the provisions of Article 3 of Schedule III of the Bengal Tenancy Act, by Plaintiff's possession of the tenancy for a period of over two years.

26. The court of appeal below came to the finding that the surrender was valid and effective so far as Nilmoni and Panchi Bibi and the widow of Fazarali were concerned, inasmuch as they were majors at the relevant time, but ineffective so far as the minor heirs of Fazarali and Rajabali were concerned; as such, there was a partial surrender of the tenancy. The court of appeal below also came to the finding that the interest of the minor heirs of Fazarali and Rajabali which had not been extinguished by surrender was extinguished by adverse possession for over two years by the Plaintiff under the provisions of Article 3 of Schedule III of the Bengal Tenancy Act.

27. I am not called upon to decide the question of partial surrender and the effect of it. If there was a partial surrender, the Plaintiff could not ask for recovery of khas possession, but was entitled only to joint possession along with the other heirs of Fazarali and Rajabali, whose interests had not been legally surrendered. The suit was not framed in that way, and I am of opinion that the Plaintiff should not be allowed to make the case of partial surrender now. The questions whether there was a partial surrender, and if so, the effect of it, and also the relief which the Plaintiff may be entitled to, if a case of partial surrender is made out are left open.

28. Mr. Ghosh drew our attention to the language used in Article 3 of Schedule III of the Bengal Tenancy Act and also in Article 142 of Schedule I of the Limitation Act. His argument is that under Article 3 of Schedule III of the Bengal Tenancy Act, time begins to run from the date of dispossession as contrasted to the provisions of Article 142 of Schedule I of the Limitation Act where time begins to run from the date of the dispossession or discontinuance. He argued that in this case there was no ouster or dispossession by the landlord. The tenants merely went out or discontinued possession, and the landlord entered into possession, and as such, the provisions of Article 3 of Schedule III of the Bengal Tenancy Act were not attracted at all.

29. Mr. Sen, appearing for the Respondents, argued that the term "dispossession" was wide enough to include "discontinuance of possession". "Dispossession" was, according to Mr. Sen, a generic term and included all types of cases in which the tenant went out of possession and the landlord entered into possession. The manner in which possession was taken by the landlord was immaterial.

30. The decision must turn on the exact meaning of the words "dispossession" and "discontinuance of possession", and also on the effect of the absence of the words "discontinuance of possession" in Article 3 of Schedule III of the Bengal Tenancy Act.

31. The meaning of the words "dispossession" or "discontinuance of possession" has been judicially considered. Reference may be made to the observation of Fry, J. in the case of *Rains v. Buxton* (supra), which is to the effect hereinafter appearing:

In my view, the difference between dispossession and the discontinuance of possession might be expressed in this way-the one is where a person comes in and drives out the others from possession, the other case is whether the person in possession goes out and is followed into possession by other persons.

32. To the same effect is the observation of R.C. Mitter J. in *Abdul Latif v. Nawaj Khajeh Habibulla* (Supra). The term "discontinuance of possession", according to R.C. Mitter, J. Connotes three elements-two physical and one mental. There must be (i) actual "withdrawal, (2) with an intention to abandon and (3) that another should step in begin to occupy after the withdrawal. Dispossession signifies expulsion, an adverse act which has the effect of putting out.

33. In the case of *Rakhal Das v. Khirode Bandhu Nandi* (supra), D.N. Mitter, J. observed as follows:

"Dispossession" implies the coming in of a person and the driving out of another from possession while "discontinuance" implies the going out of the person in possession and this being followed into possession by another.

34. Agreeing with the decisions, hereinbefore referred to, I hold that the scope of Article 3 of Schedule III of the Bengal Tenancy Act is not as wide as Article 142

of Schedule I of the Limitation Act, and cases of discontinuance of possession are excluded from the scope of Article 3 of Schedule III of the Bengal Tenancy Act. The difference in language between the two articles is too patent to be ignored.

35. The circumstances under which the tenants gave up possession of the disputed land appear from the following statement in the plaint:

On account of economic difficulties and also on account of flood and failure of crop the entire lands of the aforesaid jama of Rs. 51-7-0 annas was surrendered in favour of the Plaintiffs towards the end of 1345 B.S. and possession was given up by the tenants in favour of the Plaintiffs.

36. The circumstances, aforesaid are not indicative of dispossession but of mere discontinuance of possession by the tenants. I am, therefore, of opinion that the provisions of Article 3 of Schedule III of the Bengal Tenancy Act are not attracted in the facts of the present case.