
(1937) 03 PAT CK 0014
In the Patna High Court

Rani Bhuneshwari Koer

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 02-03-1937

Acts Referred:

Transfer of Property Act, 1882 — Section 115

Citation : AIR 1937 Patna 374 : 169 Ind. Cas. 756

Hon'ble Judges : Courtney-Terrell, C.J.; James, J

Bench : Division Bench

Judgement

Courtney Terrell, C.J.—This appeal arises out of a suit by Rani Bhuneshwari Koer to eject the Secretary of State from possession of lands which constitute 8 1/2 annas of Mahal Dakhner situated in what is known as the 7 annas share in the Tikari Raj. The plaintiff is admittedly the zamindar of the estate. The Secretary of States claims to be a permanent tenant of the estate, and in such cases the onus is upon the defendant to establish his permanent right. The history of the plaintiff's title has been succinctly summarised by the learned Subordinate Judge and the following is a reproduction of that part of his judgment. Maharaja Mitterjit Singh Bahadur was the 16 annas proprietor of Tikari Raj: he died in 1840 and in the same year his two sons Maharaja "Het Narain Singh and Raja Mode Narain Singh partitioned the entire Tikari Raj into two blocks so that the former got a 9 annas share and the latter the above mentioned 7 annas. The Dakhner Mahal consisting of about 31 villages was allotted to Raja Mode Narain Singh with other properties in respect of his 7 annas share. Raja Mode Narain Singh died in 1857 leaving two widows, Rani Asmedh Koer and Rani Sunet Koer, who jointly inherited his entire property and came into possession inter alia of Mahal Dakhner. In 1861 the two Ranis divided the entire inheritance, the 8 1/2 annas share being taken by the Senior Rani Asmedh Koer and the 7 1/2 annas share was taken by the junior Rani Sunet Koer. Mahal Dakhner was also divided in the same ratio, that is to say, 8 1/2 annas share in Mahal Dakhner came into the possession of Asmedh Koer and 7 1/2 annas share came into the possession of Sunet Koer. Sunet Koer died in 1872 and her 7 1/2 annas share devolved on

her co-widow Rani Asmedh Koer, who, by two deeds of 1872 and 1873, respectively, surrendered the 8 1/2 annas share and the 7 1/2 annas share in favour of Raja Ran Bahadur, the nearest agnate of her deceased husband so that Raja Ran Bahadur Singh came into possession of the 7 annas Tikari Raj as an absolute proprietor. In 1890, Raja Ran Bahadur Singh bequeathed the entire 7 annas Tikari Raj to Raj Kumari Ratan Kuer, the daughter of his predeceased son. She, in turn, in 1895, bequeathed the entire estate to her only daughter the plaintiff who thus became the absolute proprietress of the 7 annas Tikari estate including Mahal Dakhner.

2. Now Raja Mode Narain Singh had a Muhammadan mistress Musammat Barati Begum by whom he had two illegitimate sons, Mirza Himat Bahadur and Mirza Ekbal Bahadur. In 1860 Mirza Ekbal Bahadur instituted criminal proceedings against Rani Asmedh Koer and Rani Sunet Koer in respect of Mahal Dakhner, alleging that on December 2, 1850, Raja Mode Narain Singh had granted a permanent lease to him of Mahal Dakhner which was to take effect from the beginning of 1262 E.S. The Criminal Court found that Ekbal Bahadur was not in possession. Therefore, Ekbal Bahadur brought a regular suit in the same year against the two Ranis for a declaration of his title as a permanent mokarridar and for recovery of possession of Mahal Dakhner.

3. The meaning and effect of the decisions in this suit have been a matter of much controversy before us, and a correct decision is vital to the case, so at this stage I must digress from the narrative of events to deal with the matter. Rani Asmedh Koer did not appear and did not file any written statement in the suit and did not appear at the trial. Rani Sunet Koer, however, contested the suit on the ground that the mokarrari deed of 1850 was not genuine and that Ekbal Bahadur was never given possession. The case came before the Sadar Amin and his judgment or rather a translation into English thereof forms Ex. I in this case. The Sadar Amin seems to have found that the plaintiff had failed to prove the deed as against Rani Sunet Koer; but in as much as in the criminal case Rani Asmedh Koer had admitted the deed and the plaintiff's mokarrari right and as she had not disputed it in the suit before him, he held that it must be taken to have been admitted by her and, therefore, the plaintiff's claim must succeed as against Rani Asmedh Koer in respect of the 8 1/2 annas share in Mahal Dakhner. The plaintiff appealed to the High Court in Bengal and a separate appeal was preferred by Rani Asmedh Koer. The judgment of the High Court, dated January 1865, is Ex. I (a). It is not easy to understand. In discussing the genuineness of the deed the arguments in favour thereof and against it are set forth and it was held that the plaintiff failed to prove the deed but that the separate appeal preferred by the elder Rani Asmedh Koer could not be heard as she had not defended the case in the lower Court. The learned Judges held that the two Ranis, had been entirely opposed to each other and that, the acts of the elder Rani could not bind the younger. They upheld the view of the Sadar Amin that the elder Rani was bound by her admission of the deed of 1850 and the suit failed as against the younger Rani.

4. It was contended before us that the effect of these judgments was to decide that the deed of 1850 had not been proved at all either as against Rani Sunet Koer or as against Rani Asmedh Koer and that the judgment (to quote the phrase used by Mr. P.R. Das in support of the appellant) "proceeded upon the admission of Asmedh Koer," and he relied upon the case in: Bai Kanku v. Bai Jadav 43 B. 869 : 53 Ind. Cas. 164 : AIR 1919 Bom. 146 : 21 Bom. L.R. 837 as an instance of the principle that a decision on a widow's admission will not affect the reversioner, but the decision in, that case distinctly recognizes the principle that a decree against a widow in relation to her husband's property may bind the reversioners as well and that this notwithstanding that the decree was based on an admission of fact, always provided that the decree was properly obtained and that there was nothing, unfair in the trial. It was a case of a suit by a reversioner to redeem, a mortgage created by a Hindu widow. There had been a previous suit by the widow to redeem the mortgage. The mortgage had contained a clause that if the money was, not paid within a year, the mortgagee should be counts the owner. The earlier suit by the widow had been dismissed by the Munsif on the ground that the plaintiff had admitted in another suit by the mortgagee, against the tenant that the mortgagee had become the owner of the property by the operation of the clause in question. There had been an appeal from the Munsifs decision but it was recorded as "adjusted" before the hearing.

5. It will be seen that the alleged admission was one of law only and it was rightly held that such an admission could not found any plea of estoppel. In the case before us the learned Subordinate Judge, has found that the decree was properly and fairly obtained by Ekbal Bahadur against Rani Asmedh Koer and having regard to the fact that some 80 years had passed and that every one concerned was dead. I do not see how he could have found otherwise. In Ekbal's suit judgment was given against Asmedh Koer on the basis of an admission of fact which created: an estoppel. The two widows were sued as representing the estate and the, judgment turned not upon the validity of alienations by Aamedh Koer but upon the genuineness of an alienation by the last male holder Raja Mode Narain Singh, Had (he question been whether Asmedh Koer was estopped from denying the validity of alienations made, by her of her 8 1/2 annas 4hare then the decision would not have bound, the reversioners beyond her lifetime, for certainly Asmedh Koer could only effect alienations for the term of her own life. Nor was the decree based on the basis of a compromise by Asmedh Koer Had it been so, the appellant might Justly Have urged that it was one which did not bind the reversioners. The distinction is illustrated by the case in Sarju Prasad Rout Vs. Mangal Singh, --[Ed.]:

It is urged that this Court has held that a compromise decree between a Hindu widow and a third party would not necessarily bind a reversioner. A compromise decree is merely an embodiment of a private contract, entered into by a widow and private persons. There is dearly in such a case no, adjudication by the Court. An ex parte, decree, however, stands on a different footing. There is no confession of judgment by her and the plaintiff has to prove by evidence and

satisfy the Court that he has got a good case. We, therefore, think that an ex parte decree, unless there be anything special which, would suggest that it was not fairly and: properly obtained would be binding on the reversioners.

6. It has been argued that the admission of Asmedh Koer was something personal to herself which could not bind the reversioners but an admission of fact creating an estoppel as opposed to an admission of law will, in the absence of fraud or collusion, create an estoppel which will bind the reversioners; and the case in *Risal Singh v. Balwant Singh* 40 A. 593 : 48 Ind. Cas. 553 : AIR 1918 P.C. 87 : 45 I.A. 168 : 28 C.L.J. 519 : 24 11 L.T. 361 : 9 L.W. 52 : 230 W.N. 326 : (1919) M.W.N. 155 : 36 M.L.J. 597 : 21 Bom. L.E. 511 (P.C.) before the Judicial Committee illustrates the difference. In that case a widow had in a former case admitted the fact of an adoption by her. It was contended (as in the present case) that the estoppel could not bind the reversionary in a subsequent case because it was something personal to herself. Their Lordships of the Privy Council rejecting: this argument said :

It has been urged by the learned Counsel for the appellants here that Rani Dhoram Kunwar can not be regarded as having represented the estate in: her suit against Balwant Singh, as by her acts she was personally estopped from denying that she had validly adopted him to Raja Raghubir Singh. In the absence of all authority, their Lordships cannot decide that a Hindu lady, otherwise qualified to represent an estate in litigation, ceases to be so qualified merely owing to personal disability or disadvantage as a litigant, although the merits are tried and the trial is fair and honest. The principle is that reversioners must risk that so that there may be an end to litigation.

7. It was however, further contended that Asmedh Koer was only one of two co-widows and that she could not alone burden the estate even for necessity; but the case before us is not one of alienation by a co-widow; it is a case of the effect of a judgment against a co-widow in a suit against both co-widows and the principle upon which the argument is founded has no application. The learned Subordinate Judge found that the decree was properly and fairly obtained by Ekbal Bahadur against Rani Asmedh Koer in respect of her 8 1/2 annas share but he entirely failed to understand the case reported in *Bai Kanku v. Bai Jadav* 43 B. 869 : 53 Ind. Cas. 164 : AIR 1919 Bom. 146 : 21 Bom. L.R. 837 to which I have above referred and did not notice that in that case the admission by the widow in the previous suit was one of law and not of fact. He has held, and I do not see how he is justified on the evidence in holding that, the admission was made on account of her bitter feeling against Rani Sunet Kuer in order to injure her. Nor did he notice the circumstance that Rani. Asmedh Koer had made an admission of fact which had estopped her from raising that question of fact in the subsequent litigation, laboring under these errors he held that the reversioners were not bound. He made the further mistake of holding that the admission by Asmedh Koer operated as an alienation by her and being an alienation by one widow without the concurrence, of the co-widow was wholly void, whereas there

is no analogy between an admission of a matter of fact in litigation and an alienation.

8. In my opinion the true legal interpretation of the judgment in Ekbal's suit is that Asmedh Koer was estopped from denying the genuineness of the deed and that "judgment proceeded against her on the basis that the deed was genuine and that" to the extent of her 8 1/2 annas share she failed in the suit and, therefore, title and possession to the land in suit were awarded to the plaintiff and to that extent the reversioners were bound by the judgment. The narrative of events may now be resumed in order that the position of the Secretary of State may be ascertained. On October 29, 1878, Asmedh Koer died. On May 3, 1878, the Secretary of State began three suits to recover the properties of; Ekbal and Barati Begum. The suits were against one Jalaluddin who was alleged to be the adopted son of Ekbal and who was in possession of the estate. The suits were based on the allegation that Barati and Ekbal had died without heirs that the property had escheated to the Crown, and there was a claim for 11 years mesne profits. On May 7, 1879, the Secretary of State obtained a decree and since then has been in possession. Exhibit K is the Record of Rights relating to Mahal Dakhner. In this the Secretary of State is recorded as mokarraridar of 8 1/2 anna share. The plaintiff is recorded as the landlord; the tenure-holder's interest is recorded as "mofcarrari". The mode in which the rent was fixed is recorded as "under patta dated 12th Pous 1258 Fasli (December 11, 1850)", and the period for which the rent has been fixed is recorded as "permanent. This was published on February 19, 1897.

9. It is argued on behalf of the respondent that this is an entry of possession by virtue of the rights conferred by a particular document i.e., the document of 1850 and that the effect of the judgments of the Sadar Amin and of the High Court in the suit by Ekbal was to destroy the validity of this document. Reliance was placed upon the authority in Datto Shivram Gosavi Vs. BaBa Saheb Malhar Deshpande, for the proposition that, where an entry purports to record the basis of the tenant's possession as founded upon a particular document and where the Court finds that the document is false, the presumption attaching to the Record of Rights is rebutted. I have no doubt that this proposition is entirely sound; but in the case before us the contention that the document has been proved to be false is founded entirely upon the judgment referred to and no other evidence has been offered on either side with regard to the facts relevant to, its genuineness. Had there been such other evidence, it might have been material to inquire whether the respondent had proved that the document was invalid, but no such conclusion can be reached from the judgment referred to and it must be remembered that there has been no attempt since 1850 to attack the grant made by Raja Mode Narain Singh to Barati Begum and her children.

10. In my opinion the presumption attaching to the Record of Rights has not been rebutted by the plaintiff and the suit should have failed on this ground. The learned Subordinate Judge, however hold, having regard to his view of the

admissions made by Asmedh Koer and of the judgments in Ekbal's suit, that the plaintiff had succeeded in showing that the entry in the Record of Rights was erroneous. It was frankly conceded by Mr. Das on behalf of the plaintiff appellant that if the document of 1850 were not displaced, his suit must necessarily fail and it was, therefore, a vital matter that he should support the judgment of the learned Subordinate Judge that the presumption of the Record of Rights was rebutted, and in the event of our decision being against him on this point, the further grounds upon which the learned. Subordinate Judge decided to dismiss the suit were of no importance. In view, however, of the fact that this case may go further and that a higher tribunal may not support the decision of this Court which I have set forth above, it becomes necessary to refer briefly to further arguments raised on behalf of the defendant upon which the Subordinate Judge dismissed the plaintiffs: suit. He found that the defendant had established a defence of adverse possession to the knowledge of the plaintiff and that the plaintiff's suit was, therefore, barred by limitation.

11. The learned Judge approached this question on very clear and logical grounds, having held that the tenancy created by Raja Mode Narain's deed of 1850 failed. He held that the possession by the Secretary of State was from its inception that, of a trespasser and he examined the facts since that possession began and found that from the very beginning the Raja was well aware of the nature of the claim made by the supposed trespasser and notwithstanding such claim, the Raja and his successors forbore for a time, much exceeding the statutory period of limitation, to sue the defendant and submitted to the defendant's possession, so that the defendant's claim, became established as a title. The Judge's, survey of the facts under Issues Nos. 5, 9 and 10 is clear, concise and admirably, arranged, and I desire to adopt it as part of this judgment. There are some minor points with regard to the reception of evidence whose admissibility is to my mind doubtful, but even if these are excluded, they make no difference to the conclusion.

12. The Raja assisted the Government in the suit for possession founded on escheat and inasmuch as only a permanent tenancy can escheat and tenancies for shorter periods revert to the landlord, the Raja clearly knew the nature of the defendant's claim. He never took possession of the 8 1/2 annas share of the Dakhner Mahal in suit and he must have known why he did not do so. There are extant a number of documents mentioned in the Judge's decision on this point which show clearly that he had full knowledge of all that had happened regarding the Dakhner Mahal. It is true that for a very short period he seemed inclined to contest the claim of the Government but he soon abandoned this attitude and made no attempt whatever to enforce any claim on his part. Indeed he very soon asked for a settlement by the Government upon himself rather than upon the illegitimate children or Barati Begum and his temporary attitude was in all probability, founded upon his dislike of these people whose sentimental claim at this time seems to have attracted the notice of Government. But in June 1881 the Raja registered the name of the Secretary of State in his sharista as a tenant

and continued to receive the very rent which was reserved by the grant of 1850. The precise nature of the entry is not now known but from the fact that the Raja and his successors have never until the present time asserted that the Secretary of State was anything less than a permanent tenant, it may safely be assumed that he was entered in the landlord's sharista as a tenant of that kind. Since the hearing of this case I have again read carefully through the learned Subordinate Judge's judgment and have examined the documents to which he makes reference in support of his findings. I find that his comments are entirely justified and I do not wish to elaborate what he has so carefully and thoroughly set forth.

13. The argument on behalf of the plaintiff-appellant has proceeded on the basis that the defendant's possession as a permanent tenant came to an end on the death of Asmedh Koer, that the defendant continued in possession without any title and that the payment and acceptance of rent merely created a tenancy from year to year u/s 115, Transfer of Property Act, and that once having become a tenant the mere further acceptance of rent by the landlord would not constitute a new grant or an admission by the Raja and his successors of permanent rights, and it is further urged that no mere assertion of such a right coupled with payment of rent would justify a claim by the tenant to a title by adverse possession. Of course the whole of this argument fails as was admitted by Mr. P.R. Das if the Secretary of State was in possession by virtue of the document of 1850 and had a title under that document as a permanent tenant. But unless the defendant had by some means become a tenant at will or a tenant from year to year of the Raja, the principle to which the argument has recourse has no application. The facts referred to in the judgment of the Subordinate Judge clearly establish that at no time did the Raja treat the Secretary of State as a tenant at will or a tenant from year to year or as otherwise than as a permanent tenant, and that state of affairs has prevailed until this suit began. If the Secretary of State came on to the land as a trespasser with an open claim to permanent possession, the acceptance of rent by the landlord would not create a tenancy-at-will or a tenancy from year to year. There is another aspect of the facts which to my mind is conclusive against the claim by the plaintiff. The plaintiff and her predecessors having for many years been aware of the claim of the defendant to hold in perpetuity and having accepted rent from the defendant on that basis are now estopped from denying the perpetual nature of the defendant's tenancy. On behalf of the plaintiff we were referred to the case in *Maharani Beni Pershad Koeri v. Dadh Nath Roy* 27 C. 156 : 26 I.A. 216 : 4 C.W.N. 274 : 7 Sar. 580 (P.C.). The facts of that case are as follows:

14. In the year 1836, the plaintiff's ancestors granted the estate in question to one Lal Barmeswar Singh for life. In 1849 the grantee purported to execute a permanent lease to one Ram Golam Raut. In 1855 Lal Barmeswar Singh surrendered his estate to the plaintiff's ancestor who allowed Ram Golam to remain in possession. The defendant was one Dudnath Roy, the representative of the purchaser from Ram Golam. Their Lordships held that Ram Golam's tenure came to an end at latest on the death of Lal Barmeswar and that the perpetual

lease by Lal Barmeswar was void as against the successors to the plaintiffs ancestor and that the mere receipt of rent by the plaintiff's ancestor after the death of Lal Barmeswar would not have the effect of confirming the perpetual lease by Barmeswar and if matters had rested there Ram Golam was a mere tenant at will; but their Lordships agreed with the finding of the Subordinate Judge on the evidence that Ram Golam was allowed to enjoy the village as a mokarran tenant for his life and not as a tenant at-will; and in these circumstances no suit could have been brought for recovery of possession until Ram Golam's death. It is true that in that case it was contended on behalf of the purchaser from Ram Golam that he had given notice to the plaintiff that he held on a perpetual tenure which would make his possession adverse within the meaning of the Limitation Act. Their Lordships held that a mere notice by a person holding for his life that he claimed to be holding on a perpetual or hereditary tenure would not make his possession adverse so as to bar a suit for possession on the expiration of the life tenancy. So in the case before us if the defendant held a mere tenancy for the life of Asmedh Koer terrain" able on her death or if he held on a tenancy-at will or from year to year no mere claim by the defendant accompanied by the payment of rent would suffice to found a claim to adverse possession for it is correctly contended by the plaintiff that a landlord, provided he gets his rent, is entitled to ignore such claims made by a tenant. This may be expressed shortly by saying that the landlord may properly ignore the bark of the tenant though he might not be able to ignore his bite. But the case is useful by reason of their Lordships discussion of the position of Ram Golam and finding on the facts that Ram Golam was allowed to remain in possession on the basis that his tenancy was to endure for his life, held that during Ram Golam's life the landlord would not have been entitled to eject him. In other words the landlord, if he had raised the contention that Ram Golam held otherwise than on a life tenancy would have been estopped. So in the case before us the plaintiff and her predecessors in any case allowed the Secretary of State to remain in possession and to pay rent on basis of a permanent tenancy and in these circumstances they are estopped from setting up a claim that the tenancy of the Secretary of State is a mere tenancy from year to year. I would, therefore, dismiss this appeal with costs.

James, J.

15. I agree.