

(1919) 06 PAT CK 0017
In the Patna High Court

Shaikh Abdul Aziz and Others

APPELLANT

Vs

Musammat Bibi Tauhidunnissa

RESPONDENT

Date of Decision : 26-06-1919

Acts Referred:

Citation : AIR 1919 Patna 474 : 52 Ind. Cas. 380

Hon'ble Judges : Atkinson, J

Bench : Single Bench

Judgement

Atkinson, J.—This miscellaneous appeal comes before me from the decision of the District Judge of Patna, dated the 2nd December 1918.

2. The plaintiff sues as a co-sharer proprietor to recover in one suit his share of the rent of more than one holding without joining his other co-sharers as parties to the suit.

3. The tenant against whom the decree has been obtained contends, first, that the decree so obtained is not a rent decree in the ordinary acceptation of the term as understood and defined by the Bengal Tenancy Act, but that it is merely a money decree, and that consequently in the execution of such decree the plaintiff as a co-sharer proprietor is not entitled to bring the holding to sale in respect of such decree. Secondly, it is contended by the tenant by way of petition against the sale of the holding in execution proceedings, that the holding being non-transferable by custom the tenant is entitled to prohibit the landlord from selling the same without the tenant's consent, if the holding is brought to sale in execution of a rent decree.

4. The learned Munsif found in favour of the respective contentions put forward on behalf of the tenant, and struck off the execution proceedings. On the other hand the learned District Judge took a contrary view and held that though the decree that was obtained was strictly speaking a money decree, that yet as it was a decree between two persons occupying the position of landlord and tenant, the tenant was de-barred from raising as against the landlord the contention that

the holding could not be sold by reason of there being no custom in favour of transferability, and the learned Judge, therefore, directed that the execution proceeding should proceed. In my opinion the learned Judge was clearly wrong in the conclusion at which he arrived,

5. It is established by a long and consistent line of authority that where a landlord seeks to recover in one suit the rent of more than one holding, a decree so obtained in such suit is a money decree and not a rent decree, and this is so in cases where a landlord as a co-sharer seeks to recover in one suit his shares of the rent of more than one holding, without joining his co-sharer proprietors as parties to the suit. All the cases are collected in Mr. Sen's Book on Bengal Tenancy Act, page 602. In all there are some 12 or 15 authorities in support of the contention put forward by the defendant. The following authorities may be referred to:

Hridaynath Das Chowdhry v. Krishna Prasad Sircar 34 C. 293 : 11 C.W.N. 497 : 6 C.L.T. 153, Baikanta Nath Roy v. Thakur Debendro Nath Sahi 11 C.W.N. 676, Bipra Das Dey v. Rajaram Bandopadhyaya 3 Ind. Cas. 306 : 36 C. 765 : 13 C.W.N. 650 and Rashmohini Dasi v. Debendra Nath Singha 13 Ind. Cas. 604 : 16 C.W.N. 395.

6. Accordingly in my opinion the decree that was obtained by the plaintiff in this suit was not a rent decree, but a money decree; and the fact that the co-sharer proprietors of the plaintiff were not joined as parties to the proceedings, in my opinion, negatives the possibility of the decree that was obtained by the plaintiff being a rent decree.

7. The question remains to be considered whether the defendant as a tenant is entitled to object to the landlord selling the holdings in respect of which a decree for rent was obtained, on the ground that the holdings were not transferable by custom.

8. This proposition has been considered three times in this High Court since its constitution and the point now urged before me seems amply covered by authority. The case reported as Macpherson v. Debi Bhushan Lal 42 Ind. Cas. 33 : 2 P.L.J. 530 is an express authority that a tenant in execution proceedings is entitled to assert the right that the landlord is not entitled to bring a holding to sale in pursuance of a rent decree if the holding is not transferable. A tenant's right of occupation of a non-transferable holding is merely a personal right which a tenant is entitled to assert as against his landlord, and a landlord has a corresponding right as against his tenant; and this is so whether the alienation contemplated by either is voluntary or involuntary.

9. The cases reported as Macpherson v. Debi Bhushan Lal 42 Ind. Cas. 33 : 2 P.L.J. 530 was followed in a later case reported as Madhu Padhan v. Jagu Jena 51 Ind. Cas. 139 : 4 P.L.J. 294. The case reported as Madhu Padhan v. Jagu Jena 51 Ind. Cas. 139 : 4 P.L.J. 294 is stated to be distinguishable by reason of the fact that it was a decision upon the construction of the transfer section of the Orissa Tenancy Act; but a perusal of that section would show that the principle of that

decision equally applies to oases under the Bengal Tenancy Act where holdings are not transferable save by custom or consent.

10. Like authorities are to be found decided in the oases reported as Sadari Kunwari v. Palaknath 33 Ind. Cas. 937 : 1 P.L.J. 257 : 3 P.L.W. 104. Therefore, I am satisfied on authority that the learned District Judge was wrong and that the decision of the learned Munsif was right. The plaintiffs are only entitled to a money decree and are not entitled by virtue of that fact to bring the holding to sale; and if the decree be a rent decree, the defendant as tenant is entitled as against the landlord to assert that the holding cannot be sold by reason of the fact that it is non-transferable.

11. Accordingly I reverse the order of the learned District Judge and I direct that the execution proceeding be struck off, and I award three gold mohurs costs as against the respondents.