

(1936) 03 CAL CK 0033

In the Calcutta High Court

Case No : L. P. Appeals Nos. 3 and 4 of 1934

Shib Narayan Ghose and Another

APPELLANT

Vs

Gopal Chandra Ghosh and Others

RESPONDENT

Date of Decision : 20-03-1936

Acts Referred:

Citation : (1936) 03 CAL CK 0033

Final Decision : Allowed

Judgement

1. The Plaintiffs in the suits in which these two appeals have arisen, prayed for the enforcement of the terms of agreements executed by the predecessors of the Defendants. The agreements described as ekrarnamas recited the fact that the executants had, on the date of the ekrarnamas, executed; mokrari mourasi pottas in respect of lands described in the documents, taking selamis and fixing annual rents. The contract contained in the ekrarnamas which was sought to be enforced in the suits, was of the following description: If within fifteen years from the date of the ekrarnamas, the amount of selami paid for the mokrari mourasi portas together with costs of the ekrarnamas was paid, deeds of surrender shall be executed in respect of the mokrari mourashi vottas, and the lands shall be returned. If the amounts stipulated were not accepted and the lands were not vacated, the party concerned shall be entitled to take back the lands and the mokrari pottas with the help of the law, by depositing the amounts stipulated, in Court. The parties to the ekrarnamas together with their heirs and successors-in-interest shall remain bound by the contract contained in the same. The Plaintiff's claim in suit was based on the contract aforesaid after the amounts stipulated for in the ekrarnamas had been duly deposited in Court. The claim was resisted by the Defendants. For the purpose of these appeals, it has to be taken that the defence of the contesting Defendants was that the Plaintiffs were not legally entitled to get back the lands in suit from the Defendants, and that the Defendants were entitled to remain in possession of the lands covered by the mokrari mourasi pottas and the ekrarnamas, as occupancy raiyats.

2. The question for consideration in these appeals is whether the Defendants were entitled to retain possession of the lands in suit. That question was decided in favour of the Plaintiffs in the suits giving rise to these appeals by the learned Subordinate Judge in the Court of appeal below, on the ground that the Defendants were bound by the contract entered into by their predecessors as contained in the ekrarnamas, to which reference has been made above. The Court of appeal below, it may be mentioned, agreed with the trial Court in holding that the Defendants could not possibly have acquired occupancy right in the lands in suit, in defeasance of their mokrari mourashi right.

3. The decision of the Subordinate Judge in the Court of appeal in favour of the Plaintiffs in the suit was reversed on appeal to this Court, by our learned brother Mr. Justice Patterson; and the Plaintiffs preferred these appeals, under sec. 15 of the Letters Patent, after leave to appeal was granted by the learned Judge.

4. The grounds urged in support of the appeals were that the learned Judge of this Court was in error in holding that the Defendants were entitled to retain possession of the lands in suit as raiyats who had acquired rights of occupancy, that the ekrarnamas contemplated merely the surrender of the mourashi mokrari leases and not the actual lands to which they related, and that even if the ekrarnamas were given full effect to, the surrender of the mourashi mokrari leases could not affect the occupancy rights subsequently acquired by the lessees; and further that even if the terms of the ekrarnamas were inconsistent with the exercise by the lessees of the occupancy rights acquired by them, the ekrarnamas must to that extent be held to be unenforceable.

5. In the case before us, the rights of parties must be determined with reference to the mokrari mourashi pottas and the ekrarnamas executed simultaneously, and in our judgment, the contentions urged in support of the appeals, based on the terms of the ekrarnamas, must be allowed to prevail. It was distinctly stipulated by the ekrarnamas that the Defendants would vacate the lands in suit in favour of the Plaintiffs; and the suits giving rise to these appeals had to be brought by the Plaintiffs to enforce the aforesaid contract contained in the ekrarnamas. The ekrarnamas and the mourashi mokrari pottas were simultaneous, and in view of the provisions contained in sec. 179 of the Bengal Tenancy Act, there could not be any question of acquisition of occupancy right or barring the acquisition of occupancy right or eviction of persons who had acquired rights of occupancy, as mentioned in sec. 178 of the Bengal Tenancy Act. The contract evidenced by the ekrarnamas was valid and enforceable, and it did not contravene the provision of sec. 178 of the Bengal Tenancy Act. The mokrari mourashi pottas and the ekrarnamas executed simultaneously, together constituted a contract between the parties concerned, the Plaintiffs and the Defendants in the suits giving rise to these appeals. The Plaintiffs let out the lands to the Defendants by mokrari mourashi pottas, to which the provisions contained in sec. 179 of the Bengal Tenancy Act were applicable, and the parties were at liberty to enter into a contract on any terms agreed upon by them. On

the stipulations contained in the ekrarnamas referred to in a previous part of the judgment, the Plaintiffs were entitled to sue for specific performance of the contract that the Defendants were to vacate the lands in suit on receipt of the amounts agreed upon. The terms of the contract between the parties concerned were definite and clear; and the Defendants were not entitled to avoid an agreement lawfully entered into by their predecessors-in-title for giving up possession of the lands in suit, by asserting that they had acquired rights of occupancy in the lands in suit. As has been indicated above, the contract between the parties entirely negatives the position taken up by the Defendants that they were entitled to retain possession of the lands in suit as occupancy tenants, even if their mokrari rights were extinguished by reason of the ekrarnamas executed by their predecessors in interest simultaneously with their mourashi mokrari leases.

6. The result of the conclusions we have arrived at, as mentioned above, is that the appeals are allowed; the decision of our learned brother Mr. Justice Patterson and the decrees passed by him are set aside, and those of the Subordinate Judge, in the Court of Appeal below, in favour of the Plaintiffs-Appellants, are restored. The Plaintiffs-Appellants are entitled to get their costs in all the Courts from the Defendants-Respondents.