

(1938) 05 CAL CK 0012
In the Calcutta High Court

Sm. Radharani Debi Chatterjee

APPELLANT

Vs

Sri Bijoy Chand Mahatab Bahadur and Another

RESPONDENT

Date of Decision : 06-05-1938

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 5

Citation : AIR 1939 Cal 257

Hon'ble Judges : B.K. Mukherjea, J

Bench : Division Bench

Judgement

B.K. Mukherjea, J.—The appellant before me one Radharani Debi was one of the defendants in a rent suit commenced by the Maharaja of Burdwan as plaintiff and the appeal is directed against an order passed in a proceeding in execution of the decree obtained in that rent suit. The facts so far as they are material for our present purposes may be shortly stated as follows:

One Dwarika Prasanna Mukhopadhyay, who was defendant 1 in the rent suit, was a putnidar under the Maharaja of Burdwan and he sold his interest to defendant 2, Radharani, some time in 1925. Radharani did not comply with the provisions of Section 5 of the Putni Regulation and she was not recognized as a transferee by the Maharaja. In 1936 the Maharaja started a rent suit against the recorded tenant, Dwarika, claiming rent for the years 1339 to 1342 B.S. Dwarika in his written statement set up a plea that he had transferred the putni to Radharani prior to the period for which rent was claimed; consequently he was not answerable for the rent and the proper person to be sued was Radharani. Upon this the plaintiff made an application to the Court for adding Radharani as a party defendant to the suit although in the petition it was expressly stated that the plaintiff did not recognize her as a tenant but made her a party because of the objection raised by the tenant defendant in his written statement. This application was granted and Radharani was added as defendant 2 in the rent suit. The first Court dismissed the suit against Dwarika and decreed it in part against Radharani alone. The plaintiff preferred an appeal against this decree and

the Appellate Court modified the decision of the trial Judge and decreed the plaintiff's rent suit in its entirety against Dwarika and dismissed it against Radharani. It is this decree which is now sought to be executed and the plaintiff wants to put the tenure up to sale. Radharani who was made a party to this execution proceeding took an objection that the decree was a mere personal decree against Dwarika and consequently in execution of the same the tenure in her hands could not be sold. The trial Court negated this contention of Radharani and held that the decree was executable as a rent decree. This order was affirmed by the lower Appellate Court, and it is against this appellate order that the present second appeal has been preferred. The sole point for determination is, as to whether the decree which the plaintiff obtained against Dwarika in the rent suit could be executed as a rent decree by sale of the tenure under the provisions of Clause 14, Bengal Tenancy Act.

2. It cannot be disputed that so long as a transferee of a putni tenure is not recognized by the landlord and his name is not registered in the landlord's sherista in conformity with the provisions of Sections 5 and 6 of the Putni Regulation the latter may sue the original putnidar and put the tenure up to sale in execution of the decree without, any notice to the assignee. If therefore Radharani is regarded as an unrecognized transferee of the putni tenure, there is no doubt that the decree against Dwarika could be executed by sale of the tenure. The difficulty however is created by the fact that the Appellate Court, which finally decided the rent suit, made an observation, in the judgment, that Radharani might be-considered to have been recognized as a tenant by the Maharaja from the date on which she was made a party to the rent, suit though not with retrospective effect. Both the Courts below in the present case have taken the view that this finding contained in the judgment was conclusive between the parties; but in spite of this they have concurred in holding that the decree had the effect of a rent decree. The reasons assigned are that Radharani allowed Dwarika to represent the tenure during the period for which rent was claimed, and as she was made a party to the suit as well as to the execution proceedings she was unable to say that the decree was not a rent decree. This reasoning, in my opinion, is entirely fallacious. If the fact remains that Radharani became a tenant on and from the date when she was added as a party defendant, then at the date of the decree the tenant in respect of the tenure was Radharani and not Dwarika. There was no relationship of landlord and tenant between the plaintiff and Dwarika, at the date of the decree and consequently according to the principle laid down in *Arthur Henry Forbes v. Maharaj Bahadur Singh* A.I.R 1914. P.C. 111, the charge was not available to the landlord unless he got a decree against Radharani as well.

3. The position, in my opinion, seems to be this : If Radharani is to be deemed to be a purchaser of the putni at the date when she was recognized, according to the Appellate Court, by the landlord as a tenant, she would take the putni subject to the charge of all arrears of rent existing at the time, and though she could not be made personally liable for any amount, the tenure in her hands

could certainly be proceeded against to enforce the rent charge. The previous putnidar would, in that case, be personally liable for the entire rent that accrued due prior to the recognition of the purchaser and the decree against him would have no other effect than that of a money decree pure and simple. If, on the other hand, Radharani, was not recognized as a tenant by the landlord the only tenant on the records would be Dwarika and a decree against him would bind the tenure. It seems to me that the Courts below should not have taken the opinion of the Appellate Court expressed in the rent suit as conclusive on the point as to whether Radharani was recognized as a transferee by the landlord on the date when she was made a party. That she was not recognized before that date, is undoubtedly a finding which constitutes the foundation of the decree and cannot be disputed in execution proceedings, but the observation that she might have been recognized after the suit was instituted and at the date when she was joined as a party was, I think, a mere expression of opinion which was not quite relevant to the judgment and did not certainly constitute the basis of it. As I have said already, the petition for adding Radharani as a party defendant cannot be construed as an act of recognition on the part of the landlord. Mr. Das however has drawn my attention to certain passages in the Appellate Court's judgment in the rent suit where a contention seems to have been raised that the decree should have been passed against Radharani also. I have been also shown certain demand notices which are on the record and which seem to indicate that the zamindar did demand rent from Radharani on the footing that she was the putnidar. The Courts below however having taken the view that the opinion expressed by the Judge in the rent suit was conclusive on the point have not considered the evidence that bear upon it.

4. I think therefore that in the interest of justice this question requires further investigation. The result therefore is that the case will be sent back to the lower Appellate Court with the direction to inquire as to whether on the evidence in the record Radharani was at all recognized as a tenant by the landlord prior to the date of the decision in the rent suit. If she was recognized as a tenant the decree against Dwarika would operate only as a personal decree against him. If, on the other hand, there was no recognition on the part of the landlord, the decree must have the effect of a rent decree and the entire tenure could be attached and sold in execution proceedings. The appeal is thus allowed and the case sent back for rehearing in the light of the observations made above. There will be no order as to costs in this appeal, final costs will abide the result.