

(1933) 03 CAL CK 0041
In the Calcutta High Court

Sm. Sarada Sundari

APPELLANT

Vs

Rajani Kanta Mondal and Others

RESPONDENT

Date of Decision : 09-03-1933

Acts Referred:

Bengal Tenancy Act, 1885 — Section 85

Citation : AIR 1933 Cal 682

Hon'ble Judges : Rankin, C.J;Pearson, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case the plaintiff's predecessors granted a potta to the defendants in 1316. Before we consider what that potta says we have first of all to consider what was the status of these lessors. They were recorded in the Record of Rights as ordinary occupancy raiyats. There is nothing to suggest that they were raiyats at fixed rate or that they were tenure-holders. The Munsif found that they were ordinary occupancy raiyats and the learned Subordinate Judge did not in terms purport to interfere with that finding and indeed he could not have done so without purporting to find on evidence that the Record of Rights had been rebutted. So it must be taken that the learned Subordinate Judge had to deal with this case upon the footing that the lessors were occupancy raiyats.

2. We now come to the effect and the meaning of the potta. The document so far as it purports to describe the interest of the lessors calls it a kaemi jote," that is to say, a holding with the quality of permanency. It does not profess to say that it is a mokarari interest and it does not state explicitly that the interest is that of a raiyat or that of a tenure-holder. So much if we look to the description of the lessors by itself. When we come to look at the interest which the potta purports to grant we find it described more than once as an "ordinary raiyati jote" at an annual rental to be held from generation to generation. It goes on to say:

Besides the right to receive the rent neither myself, nor my heirs and successors will have any other right with regard to the said jote lands;" and this potta is

described as an "ordinary raiyati jote potta.

3. Now, shortly after the patta had been granted the lessors assigned to the plaintiffs and the plaintiffs bring a suit in ejectment. The Munsif takes the view that this is an ordinary case of parties flouting Section 85, Ben. Ten. Act. The lessors are ordinary occupancy raiyats. They purport to give an under-raiyati lease of a permanent character contrary to the section. Therefore in order to deceive the registering officer they use the phrase "ordinary raiyati jote" by way of description of the interest granted. In these circumstances, he says that it must be taken that the defendants are in a position to be ejected after a proper notice u/s 49. He has also held that though in the Record of Rights a very short time after this potta was granted the defendants are described as under-raiyats with a right of occupancy by custom that cannot be right. He says that it is very probable that with this potta giving them a permanent interest the Settlement Officer recorded them as under-raiyats with a right of occupancy, but he disbelieves, upon the evidence given of decrees in ejectment and otherwise, that there is any local custom of this character in this neighbourhood, and in any case it would be a very extraordinary custom under which the defendants within a few months would acquire a right of occupancy on the footing that they were mere under-raiyats. Consequently he has held that the plaintiff's suit must succeed.

4. The learned Subordinate Judge not coming to any firm finding as to the status of the plaintiffs has come to a finding that the plaintiffs are estopped from denying that the defendants have occupancy right. He finds that the plaintiffs' predecessors represented at the time of the potta that they were raiyats at fixed rate and on that footing he says that the plaintiffs' successors cannot now proceed to eject the defendants. He does not appear to me to have come to a firm decision upon the question of the right of occupancy as under-raiyats. He observes that the decrees do not show that there was no such right of occupancy. He makes no reference to the other evidence and he does not say in terms that he finds one way or the other. He says:

Be that as it may, the facts and circumstances of the present case are clear enough to show that the defendant has right of occupancy in the lands in suit.

5. On appeal to this Court the learned Judge, Jack, J., has restored the judgment of the Munsiff. He says, first of all, that this document does not operate as estoppel so as to prevent the defendants from being ejected and, in the second place, apparently on the footing that the learned Subordinate Judge did not come to a definite finding of fact, he says that the proper finding of fact on the question of the right of occupancy as an under-raiyat is that the Record of Rights has been rebutted. After a careful consideration of both the points I am of opinion that the learned Judge is right and that this appeal should be dismissed.

6. The case of the defendants at first was not that this potta gave them a mere under-raiyati interest, but their case was that they had a raiyati interest, that if the plaintiffs had misdescribed their own interest that was another matter and

they would be estopped from asserting as against the defendants that they had not the right to grant a raiyati jote. I quite appreciate that the word kaemi jote is applicable to a raiyat or a tenure-holder, but the evidence which the defendants adduced was that they believed all the time that their lessors were raiyats at fixed rate. Can they in this suit on that allegation be held to succeed on the ground of estoppel? In my judgment, they cannot. The phrase "ordinary raiyati jote" for which by the way the defendants have paid a selami of no less than Rs, 400 is not, in my opinion, to be regarded as anything except reference to a raiyati interest. If the defendants thought that they were to get a raiyati interest and if they were in a position to say that they thought that the plaintiffs were tenure-holders then a case of estoppel might be made. But this document is inconsistent with the lessors being raiyats at fixed rate and as the defendant's case is that was their belief it seems to me that they are setting up a case of estoppel that is inconsistent with their own document, It will not do to say that they were getting a permanent interest although it was not a raiyati interest and that therefore the lessors were estopped from denying that they had given a permanent interest. The position here is that under the document they took a raiyati interest although they cannot claim to have been under the belief that their lessors were tenure-holders at all. I do not think that there is any case in the books where Section 85 has been allowed to be defeated by a case of estoppel which is contrary to the terms of the document. In order that estoppel might be allowed to prevail I think it must be, first of all really a case of representation believed in by the tenants and, in the second place, it must be a case consistent with the document under which the tenancy was created. I am not prepared to apply the doctrine of estoppel in this case. On that point therefore I think the Letters Patent Appeal must fail.

7. On the question of the right of occupancy by custom as under-raiyats, that as I have said, was rejected by the Munsif and I take the same view as the learned Judge that the very casual reference to this matter by the learned Subordinate Judge is not to be taken as a firm finding of fact rejecting the opinion of the Munsif. Accordingly it was open to the learned Judge in this Court, though it was perhaps not obligatory upon him, to decide that question of fact for himself. I have no doubt at all that he came to a right decision and I think that he was entitled to act upon his own opinion in the matter by way of agreement with the Munsif. I think the appeal fails on this point also. The result is that this appeal is dismissed with costs.

Pearson, J.

8. I agree.