

(1939) 04 PAT CK 0014

In the Patna High Court

Sree Radha Gobinda Jieu Thakur and Others

APPELLANT

Vs

Susil Kumar Roy Chaudhury and Others

RESPONDENT

Date of Decision : 26-04-1939

Acts Referred:

Citation : AIR 1940 Patna 256

Hon'ble Judges : Harries, C.J.;Wort, J

Bench : Full Bench

Judgement

Wort, J.—This appeal is from the decision of Mohammad Noor J. by which he allowed the claim of the plaintiff landlords u/s 16, Orissa Tenancy Act, to the transfer fees in three suits; the defendant was a transferee who was liable to pay the fees to the landlords under that Section of the Act which I have mentioned. On 11th June 1930, the landlords entered the defendant's name in their register. Some days later kabuliyats were executed by the defendant in favour of the landlords. In those circumstances it is impossible to hold otherwise than that the landlords consented to the transfer. That being so in my judgment it is clear that the landlords were entitled to the fees provided by the Section to which I have referred. The argument put forward by the learned advocate on behalf of the defendant-appellant is in my opinion unsustainable. Section 16 provides that "in cases other than those covered by Section 15" Section 15 of the Act making exception to the liability to pay the transfer fees

when a tenure or portion of a tenure is transferred by sale, gift or exchange, the transferee or his successor in interest shall apply to the landlord to whom the rent of the tenure or portion thereof is payable for registration of the transfer, and the landlord shall in the absence of good and sufficient reason to the contrary, allow the registration of the transfer (Section 16, Orissa Tenancy Act).

2. Sub-section (2) of that Section provides that if the landlord "accepts the fee authorized by Sub-section (1) his consent to the transfer shall be deemed to have been given." Now what in my opinion is a wholly artificial argument is that, as the Section provides that the transferee "shall" apply to the landlord, nothing

can confer on the landlord any right to the registration fee till that application is made by the transferee. That in my opinion is an impossible construction to be placed upon the Act. Section 16 of the Act does nothing more than place a duty upon the transferee to move, in the sense of a debtor finding out his creditor, but it does not prevent the landlord from moving and (sic) agreeing to the transfer (as in this case before us) before the application contemplated by Section 16 is made.

3. If the contention of the learned advocate for the defendant-appellant is correct, it would result in this, that although the transfer has in fact been agreed to by the landlord, the defendant can preclude the landlord from recovering the fee which is rightfully due to the landlord u/s 16 of the Act by not taking action. In the circumstances of this case, as I have already said, the transfer must be deemed to have been consented to by reason of the entry in the register of the landlord on 11th June and the acceptance of the subsequent kabuliyats.

4. The Act nowhere lays down what form the consent should take and whether consent has been given or not is a question of fact which has been decided against the defendant in the Court below, and in addition the necessary inference from the facts which I have mentioned would be that consent had been given.

Reliance was placed upon the decision of this Court in Mahant Gobind Ramanuj Das Vs. Rani Debendrabala Dasi, . There it was clear from the facts as found by the Courts that on the application of the transferee the landlord had refused to recognize the transfer. There was some question whether his agent had authority to recognize any such transfer, and that was decided in the negative. Not having given his consent he proceeded to bring the action out of which the appeal arose, and Sir Dawson Miller in delivering the judgment of the Court made this observation:

It follows that the landlord's consent not having been given before the institution of the suit there was at the time of the institution of the suit no cause of action and that the plaintiff's suit must be dismissed.

Reliance was placed upon certain observations which it is said would support the contention that the condition precedent to the right of the landlord to claim the transfer fee was the application by the transferee. The case does support the contention as it was found that the landlord had not consented to the transfer.

5. In one part of the Section (the first part) it places a duty upon the transferee to move and in another part of the Section to which I have already referred (Sub-section 2) it protects the tenant by providing that once the landlord has accepted the fee, he cannot turn round and say that he has not consented to the transfer. On the findings and the necessary inference that the landlord has consented to the transfer, the landlord was entitled to re-cover. The judgment of Mohamad Noor J. is right and must be upheld. The appeal fails and must be dismissed with costs throughout. This order governs all three Letters Patent appeals.

Harries, C.J.

6. I agree.