
(1923) 05 CAL CK 0010
In the Calcutta High Court
Case No : S.A. No. 855 of 1921

(Sreematy) Ajimannessa Bibi and others APPELLANT
Vs
Pannalal Sil and others RESPONDENT

Date of Decision : 10-05-1923

Acts Referred:

Citation : (1923) 05 CAL CK 0010

Final Decision : Dismissed

Judgement

Suhrawardy, J.—The facts of the case leading up to this appeal are as follows:?

One Debi Charan Ghose who was the owner of the land in suit granted a lease of 6 cottahs of land to one Felaram in 1265 (1858). In 1268 B.S. or 1861 Felaram sold 2 ? cottahs (the land in suit) out of this 6 Cottahs to one Jag Mohan who sold it in the same year to Kailash Bose. After Kailash's death it was inherited by his four sons on partition among whom it fell to the share of one of the sons on whose death it was inherited by his son. On the death of the last owner his grandmother inherited it and sold in 1905 to the present defendant. It will be thus seen that there have been several transfers and successions within the last sixty years.

2. The plaintiff's case is that the lease of Felaram was a ticca lease and all the several occupiers of the leasehold were tenants-at-will. The defendant contends that the lease was a permanent one (sic) tends that as in 1897 the plaintiff predecessor who had succeeded to the interest of Debi Charan instituted an enquiry into the nature of the tenancy and as at that time he then tenant asserted a permanent right the defendant has acquired such right by adverse possession of it for more than twelve years.

3. The plaintiff has brought this suit; for recovery of possession on a declaration that the defendant is a trespasser and for recovery of damages for use and occupation. Both the Courts below have decreed the suit and overruled the defendants* objections the judgment and decree of the Lower Appellate Court

have been attacked before us on both the pleas taken by the defendant, namely, that the defendant's tenancy is a permanent one and that in any event the defendant has acquired a permanent right by adverse assertion of such interest for more than twelve years.

4. I propose first to deal with the first question which concerns itself with the construction of the lease of 1888. Before examining the document it is necessary to note certain facts which have been elicited in evidence. In the Kabala executed by Jag Mohan in 1861 in favour of Kailas in the name of his son Gopal the tenancy was described as a permanent one and since then it has been so described in subsequent transactions and assented as such by the tenant. It is not found that there has been any alteration in the rent since the creation of the tenancy. I gather from the judgment of the trial Court that the plaintiff has not proved realization of rent. The plaintiff in the plaint averred that Shashi Bhusan a son of Kailash obtained a fresh settlement of the land but the learned Subordinate Judge has found the point against the plaintiff and the Lower Appellate Court has not considered it at all. I have already referred to the fact on which the defendant's second objection is founded that in 1897 the defendant's predecessor asserted a permanent right in the land; no steps were taken by the landlord to contest the claim. I have also observed that there have been several transfers and devolutions. Now I proceed to consider the construction of the patta executed by Devi Charan Ghose in favour of Felaram on 6th August 1858. The most material portion of the document I quote in the words of the learned Judge:

With the trees you have no concern. Now all the trees you will plant there (will be) in your control; (if) on the land trees and buildings you prepare (lit. make ready) land if) afterwards you sell (these) then to my estate you will pay a fourth, without a fourth and without information (to me) you will not be able to sell. Preserving the four boundaries of the land causing to come into being Mireshortto constructing houses continue to make residence.

5. The word in the original which stands for "Buildings" in the translation is "Imarat" which ordinarily means a masonry building and it has been so understood by the trial Court. The learned District Judge feels much exercised over the word "Mireshortto Janmaiya" which has been translated as "growing the right of Miras" by the Subordinate Judge and "acquiring miras right" by the Court translator. I have no doubt in my mind that by the use of these words it was intended that the tenancy should be heritable, to be enjoyed by the grantee from generation to generation. The word Mireshortto is a misspelling and from looking at the other portions of the document it is apparent that the scribe was not well conversant with written Bengali. The learned Judge has attempted to give an ingenious philological interpretation of the word which I regret to say does not appeal to me as correct or reasonable; even if that interpretation were accepted, it would not further the plaintiff's case. The Courts below are greatly influenced by the fact that the expression Miras Taluk or tenure is not in vogue in that part

of the province, namely the District of Hoogly. That may be so but the word Miras is an Arabic word in common use in old documents and borrowed along with many other such words in the modern conveyance Bengali. It means inheritance or heritability. The word Mourasi, which is a variation of the word Miras, is in common use even this part of the country. The learned Judge admits that there is no rights re-entry on a breach of any of the conditions of the lease mentioned in the patta. That is a right which is ordinarily found in ticca leases. In my opinion the absence of this right of the landlord points to the conclusion that the contracting parties did not intend that it should be reserved. The most important right granted to the lessee is that of erecting brick built buildings on the land and it leaves no doubt in my mind as to the nature of the tenancy. It is not pretended that the land was agricultural and the lease on the face of it is for building and residential purposes. The learned Subordinate Judge, though his findings and reasonings are not consistent, observes that the original lease was for building and residential purposes and the tenancy of Kailash is presumably heritable. If this is conceded it will not be straining the meaning of the language to hold that it imports permanency. If the tenancy was terminable at the option of the landlord why was the right to plant and grow trees and erect buildings secured to the tenant? The right conferred on the tenant couple with the acquisition of the mira right should point to one construction only, namely, that the lease was intended to be permanent and heritable. In construing the language of the lease, it makes no difference in my mind that no building has been erected on the land and this fact seems to have influenced the Judge to hold that the land was not originally let for residential purposes. I fail to understand how the learned Judge has come to this conclusion. In the face of the words "constructing houses continue to make residence" found in the passage in the lease which I have quoted from his judgment. Then again the right is granted to the lessee to see the buildings he would erect on the land, but there is no provision mentioned as to what would happen if the lessee continues to live in the building from generation to generation. By selling the building it is ordinarily understood as selling the building with the land on which it would be standing. The learned Vakil for the respondent however argues that by selling the building was meant building materials. This seems to me a forced construction which I am unable to accept. The stipulation that a fourth of the price on such sale should be paid to the landlord is not inconsistent with the permanent nature of the tenancy. *Nemai Chandra Bose v. Mahomed Bair* (1). In the view I have taken of the construction of the document it is not necessary to refer to those decided cases where the origin of the tenancy was unknown and the nature of the original letting was determined by the subsequent dealing with the property. There is one other matter worth noting in this connection. It appears from the lease that at the time of the letting there were three tenants on the 6 Cottahs of land let out occupying different portions of it paying Rs. 16-8-0 annas in all as rent and the amount reserved by the lease was the same amount, namely Rs. 16-8-0 annas. It is further stated that "the profit and loss of the said land is the concern of the lessee" The lessee secures no advantage except the right to make profitable use of the land by putting

it out at a higher rent or using for building and residential purposes, right not ordinarily granted to a temporary tenant.

6. In the above view on the first point is not necessary to consider the bond question urged by the appealed result is that this appeal is (sic) void, the decree of the Courts (sic) is set aside and the plaintiff's dismissed with costs in all Courts.

Alamsley J.

7. I agree