
(1911) 04 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2237 of 1908

Suduman Jamadar and Others

APPELLANT

Vs

Behari Mahton and Another and Gopal Mahton and Another

RESPONDENT

Date of Decision : 26-04-1911

Acts Referred:

Citation : (1911) 04 CAL CK 0003

Final Decision : Dismissed

Judgement

1. This is an appeal on behalf of the Defendants in a suit, commenced by the Plaintiffs-Respondents for declaration that a rent decree and the execution sale held on the basis thereof were collusive and fraudulent and did not in any manner affect their title to the occupancy holding in dispute. The common case of the parties is that one Gopal Mahton and his brother, Punit Mahton, were the tenants of the holding under the Defendants, landlords. On the 26th December 1901, the tenants transferred the holding to the present Plaintiffs. Subsequently the landlords sued the transferors for arrears of in respect of the years 1311 to 1313. The application of the present Plaintiffs to intervene in this suit was refused, and a. decree was made by consent in favour of the landlords. In execution of this decree, the holding was put up for sale and purchased by the thirteenth Defendant. The Plaintiffs allege that no rent, as a matter of fact, was due in respect of these years, that since their purchase they had regularly paid the rent to the landlords, and that the rent suit as well as the proceedings subsequent to the decree made thereunder were fraudulent and collusive. The Subordinate Judge in concurrence with the original Court has found that the rent for recovery whereof the suit was brought was not due to the landlords, that the rent had been duly paid by the Plaintiffs from 1308 to 1313, and that, therefore, the rent suit and the execution proceedings must be deemed fraudulent and collusive. A question was also raised before the Subordinate Judge as to whether the Plaintiffs had a valid title, such as would enable them to maintain the suit. It was argued on behalf of the landlords that the holding was non-transferable and that consequently the Plaintiffs had not acquired a valid title by their purchase.

The Subordinate Judge found that the holding was not transferable but he held that as rent had been accepted from the Plaintiffs by the gomastha of the landlords on their behalf, they had acquired the status of tenants in relation to the holding purchased by them. In support of the view, the Subordinate Judge relied upon the case of *Pyari Mohun v. Gopal Paik* I. L. R. 25 Cal. 531 (1898).

2. The Defendants have now appealed to this Court, and on their behalf the decree of the Subordinate Judge has been assailed substantially on the ground that the acceptance of rent from the Plaintiffs by the gomastha of the landlords was not binding upon the latter, unless it was proved that the gomastha acted within the scope of his authority. In support of this proposition, reliance has been placed upon the case of *Bhojohuree Bunick v. Aka Golam Ali* 16 W. R. 97 (1871). Reference has also been made to the cases of *Beni Pershad Koeri v. Gobardhan Koeri* 6 C. W. N. 823 (1902) and *Beni Pershad Koeri v. Ramdahin Pandey* 10 C. W. N. 216 (1905) to show that a gomastha of a landlord has no authority to bind the latter in the matter of the recognition of the sub-division of a holding by the tenants. In our opinion, the decree of the Subordinate Judge must be maintained, though we are not prepared to affirm as a general proposition of law that a landlord is always bound by the receipts given by his patwaris or gomasthas with regard to payments of rent made by purchasers of non-transferable holdings.

3. We may at the outset, observe that neither the case of *Bhojohuree Bunick v. Aka Golam Ali* 16 W. R. 97 (1871) nor that *jagadhishur Bhattacharjee v. Joymoni Dasi* I. L. R. 25 Cal. 533 (1892) purports to lay down any inflexible rule of law. If a question arises as to the authority of a gomastha to bind the landlord by his act or omission, it must be decided on the particular facts, as in every other case about the scope of the authority of an agent to bind his principal. The burden of proof in the first instance is upon the landlord to show the precise scope of the authority he had conferred upon his agent, because this is a matter peculiarly within his knowledge. (Sec. 106, Indian Evidence Act). Now in the case before us no evidence has been given on the side of the landlords to show the precise scope of the authority conferred by them upon their patwari or gomastha. Their contention apparently has been that no patwari or gomastha can have authority to bind the landlord by the acceptance of rent from the transferee of a non-transferable occupancy holding. This clearly is an extreme proposition which cannot possibly be sustained. In the case before us, however, there are circumstances which undoubtedly militate against the contention of the landlords Appellants. The Subordinate Judge has found that rent was paid by the transferees from 1308 to 1313. The landlords have not up till now repudiated the act of their agents. They have not even now offered to refund the money received on their behalf by their agents, of which presumably they have enjoyed the benefit during all these years. Under such circumstances, the Court may reasonably draw the inference that the act of the agent was within the scope of his authority. The Court may also, in the alternative, draw the inference that as the landlords have acquiesced in the act of their agent for a number of years it is

no longer open to them to repudiate it even though it be a fact that their agent acted beyond the scope of his authority. This view of the matter does not appear to have been realised in some of the judicial decisions to which our attention was invited by the learned Vakil for the Appellants. In the case of Bent Pershad Koeri v. Gobardhan Koeri 6 C. W. N. 823 (1902). and Bern Pershad Koeri v. Ramdahin Pandey 10 C. W. N. 216 (1905)., it was assumed as a matter of law that when an agent of the landlord has recognised the sub-division of a holding, his act is not binding upon his master, while in the cases of Jagadishur Bhattacharjee v. Joymoni I. L. R. 25 Cal. 533 (1892) and Pyari Mohun v. Gopal Paik I. L. R. 25 Cal. 531 (1898), it was assumed that the landlord was bound as a matter of law by the act of his agent. As we have already explained, no such inflexible rule of law can be laid down. Under the circumstances of the case before us, we are clearly of opinion that the landlord has failed to show that the agent acted beyond the scope of his authority. It has not been, and it cannot be disputed, that if the gomastha or patwari acted within the scope of his authority, acceptance of rent by him from the Plaintiffs transferees was sufficient recognition of their status as tenants of the disputed holding, Nabakumari v. Behari Lal I. L. R. 34 Cal. 902 (1907). The result is that the decree of the Court below is affirmed and this appeal dismissed with costs.