

(1925) 02 CAL CK 0009
In the Calcutta High Court

Surendra Narain Sinha and Others

APPELLANT

Vs

Raja Bejoya Singh Dudhoria and Another

RESPONDENT

Date of Decision : 26-02-1925

Acts Referred:

Citation : 89 Ind. Cas. 785

Hon'ble Judges : Hugh Walmsley, J;Chakravarti, J

Bench : Division Bench

Judgement

Hugh Walmsley, J.—This is a novel case. The learned Subordinate Judge of Murshidabad has granted to the zemindar an injunction restraining the putnidar and his lessees, the defendants, from making bricks anywhere in the putni, and also a nominal sum by way of damages for the mischief caused by the brick-making that has already taken place.

2. The defendants appeal, and urge that the decision is wrong on three grounds, firstly, because the relation between zemindar and putnidar is such that the former is not entitled to the relief claimed: secondly, because the document creating the putni contains no stipulation against brick-making and thirdly, because the practice was begun many years ago, and has been continued without objection by the zemindar until this suit was instituted.

3. It appears to me that the defendants are entitled to succeed on each of these grounds.

4. In regard to the first ground, the matter to be considered is whether the use made of the land affects the landlord's security in the matter of the rent reserved. If the use does not threaten the complete destruction of the property, or if it does not threaten such a change as to endanger the rent, the zemindar has no cause for complete jee the case of Barada Prasad Banerjee v. Bhupendra Nath 75 Ind. Cas. 55 : 50 C. 694 : AIR (1924) (C.) 56. Mukherjee In the present instance neither of those dangers is present: where the bricks are made the surface of the land will be changed no doubt, but not irremediably, and the

evidence is that at present the area affected is about 1 per cent, of the whole.

5. An attempt has been made to treat the relation between a zemindar and a putnidar. as similar to the relation between the English owner in fee simple and the lessee for, a term of years, but the relation is really very different and the comparison does not assist us.

6. On the second point, the learned Judge seems to think that because the putni instrument does not authorise brick-making it by implication forbids it, and secondly, that a reservation against digging tanks without permission may be construed as a reservation against the excavations involved in brick-making. I do not think that either view is correct. There is no reservation against brick-making, and the zemindar cannot succeed by showing that there is no clause that permits brick-making. As for the clause about digging tanks, brick-making may not be such an old practice as tank digging but it was very well-known in 1853 when the putni was created, and if the reservation had been intended to cover brick-making it might have done so expressly.

7. On the third point the learned Judge has treated the evidence in a very strange manner. The defendants were able to show payments on account of brick-making as far back as the closing years of last century. These payments are entered in large books of account which appear to wear the marks of being genuine. The Judge, however, say nothing at all about the rokars containing these entries, and he objects to the sumars and cheque muris on the ground that they came from the custody of the putnidars Vendor and were produced late. The first objection confuses with title-deeds documents which are valuable in the information they give (sic) with the putni, But do not in themselves form any part of the evidence of title. the second objection springs from the same confusion of thought the present putnidar had to call upon his vendor to produce the papers, and it is not shown to us that he was negligent in seeking the aid of the Court to compel the production: so he cannot be held responsible for the fact that the papers were produced late. Another remark must, be made about the Judge's treatment of the evidence on this point: he says that the oral evidence is at variance with the contents of these papers and then deals very hardly with the evidence of plaintiffs witness Chandra Kanta. The learned Advocate for the respondents has been unable to show us where the oral evidence conflicts with the papers, and as for Chandra Kanta it would seem as though any suspicion to which his contradictions may give rise should go against the plaintiff rather than against the defendants.

8. My conclusion is that the learned Judge's judgment must be reversed on each of the grounds mentioned, and that the appeal must be allowed and the suit dismissed with costs in both Courts.

9. In the view which I have taken, the cross-objection preferred by the plaintiff-respondent must necessarily be dismissed with costs--hearing fee three gold mohurs.

Chakravarti, J.

10. I wish only to add a few observations as to the real nature of the putni taluqs as I understand it and how they differ from ordinary lease-hold interest.

10. Regulation VIII of 1793, Section 51, recognised the dependant taluqs created, by the zemindars before the Permanent Settlement and full protection was granted to them subject to the payment of the fixed rent. A number of these taluqs were given the option of getting themselves separated from the zemindari and directly holding under the Government as owners of separate estates and the rent payable by them to the zemindar was deducted from Revenue payable for the zemindari. This emphasises the fact that these taluqdars, though in one sense lessees, were looked upon as the absolute owner of the lands subject only to payment of the fixed rent. There was no restriction on or limitation to their rights as lessees.

11. It is in this sense it has been said that these taluqs were really transfers of the (sic) interests the consideration; being payable not in a lump sum but by annual payments in the shape of rent. The analogy of a lease-hold interest as defined by the Transfer of Property Act is out of place here. There are some features which are common but the distinctive features cannot be ignored and the existing mode of enjoyment of these taluqs disturbed.

12. The Permanent Settlement imposed a limitation of 10 years" term to all future leases created by the zemindar but this restriction was removed by Regulation V of 1812 and grant of Permanent Taluqs came into vogue and a number of taluqs called putni taluqs were created in the image of the istemrari mokatari taluqs as known before the Permanent Settlement. Regulation VIII of 1819, called the Putni Law, was enacted to grant facilities to the zemindar to create taluqs for punctual realization of rent at stated times with a view to help them to meet the demand of the Sun-set Law as the Revenue Law was popularly called.

13. These putni taluqs were really grants of the zemindar's interest without restrictions unless specially mentioned in the pattah. Even mokatari tenure was in some respects treated as not a mere lease; see *Sonet Kooer v. Himmut Bahadoor* 3 I.A. 92 : 1 C. 391 : 25 W.R. 239 : 3 Sar. P.C.J. 608 : 3 Suth. P.C.J. 257 : 1 Ind. Dec. 245 (P.C.).

14. It appears to me, therefore, that it is not possible to apply all the provisions of the Transfer of Property Act by analogy to the putni taluqs and I have no hesitation in saying that a putnidar is competent to use or lease out land for the manufacture of bricks and this is wholly consistent with a putnidar's right. The Transfer of Property Act contains a saving clause for the putnis governed by Regulation VIII of 1819.

15. The question now at issue is really governed by the case of *Abhiram Goswami v. Shyama Charan Nandi* 4 Ind. Cas. 449 : 36 C. 1003 : 10 C.L.J. 284 :

6 A.L.J. 857 : 11 Bom. L.R. 1234 : 19 M.L.J. 530 : 14 C.W.N. 1 : 36 I.A. 148 (P.C.). The question as to whether the putnidar can by this mode of user destroy the security of the rent payable need not be discussed now. It is not even suggested that the loss of the land used for manufacture of bricks has in the, least diminished the value of the putni in question.

16. The clause restricting the digging of tanks cannot be enforced and cannot by analogy furnish a restrictive covenant against brick-making. I agree with my learned brother that the suit should be dismissed with costs as also the cross-objection.