

Parabi Bibi and ors. Vs. Birendra Nath Sarkar and ors.

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Court : Kolkata

Decided On : Mar-24-1933

Reported in : AIR1933Cal543

Appellant : Parabi Bibi and ors.

Respondent : Birendra Nath Sarkar and ors.

Judgement :

Mallik, J.

1. This appeal arises out of a suit for recovery of arrears of rent for the years 1330 to 1333 B.S. The defence inter alia was a denial of relationship of landlord and tenant. This defence was negatived by both the Courts below and the Courts below gave a decree to the plaintiff. Some of the defendants are appellants before us. On behalf of the appellants it was contended that as the defendants are patnidars under the zamindar, defendant 20, and as the plaintiff based his claim on an ijara obtained by him from that zamindar, defendant 20, and as zamindari interest of defendant 20 was sold away before the period for which the rents were claimed, the plaintiff was not entitled to realize any rent from the defendants. There are two points which are involved in this argument advanced on behalf of the appellants. The first one is whether the zamindari interest of defendant 20 had been sold away before the period in suit, and the second one is whether defendant 20, the zamindar, could create a tenure, intermediate between his zamindari

interest and the patni interest of the defendants.

2. As regards the first point noted above an attempt was made on behalf of the respondent to show that the zamindari interest of defendant 20 had not in reality been sold away. But the lower appellate Court distinctly found that the zamindari interest of defendant 20 had been sold away on 21st November 1923. In second appeal we cannot go behind this finding which is a finding of fact. In support of his contention that defendant 20 could not create a tenure intermediate between his zamindari interest and the patni interest of the defendants Mr. Sastri relied mainly on two decisions of this Court; *Jarao Kumari v. Hanifuddin Akand* (1910) 4 IC 471 and *Rajendra Narain v. Abu Nasar* : AIR1928 Cal189 . The learned Judges in the case of *Jalrao v. Kumari v. Hanifuddin Akand* (1910) 4 IC 471, no doubt made an observation to the effect that they were inclined to take the view that a zamindar could not create such an intermediate tenure. But this observation as has been noted in a later decision of this Court, was only an obiter. Besides it is significant that the attention of the learned Judges was not drawn to an earlier decision of the Court in the case of *Raj Kumar Mazumdar v. Probal Chandra Ganguly* (1905) 9 CWN 656 in which a contrary view had been taken.

3. Then as regards the decision in *Rajendra Narain v. Abu Nasar* : AIR1928 Cal189 it would appear that was a case in which a patni was created by the zamindar intermediate between his zamindari interest and another patni that had been created before and the learned Judge held that in view of the peculiar incidents of a patni taluk such a thing could not be done. On the other hand there have been three decisions of this Court where the view has been accepted that a zamindar can create a tenure intermediate between his zamindari interest and a patni. First of all there is the case referred to above, namely, the case of *Raj Kumar v. Probal Chandra* (1905) 9 CWN 656. Then there is the case of *Nilambar Ghose v. Mir Mohasanuddin* AIR 1918 Cal 156, where it was held that a zamindar can create a tenure between a zamindari interest and a patni which had already been created under it. Lastly, there is a decision in the case of *Johar Mull Bhutra v. Jatindra Nath Bose* AIR 1922 Cal 412, where it was held that a zamindar who has carved out a tenure is competent to interpose between himself and his tenant, an intermediate holder who may realize the rent payable to himself by his original

tenant provided that he does not thereby prejudice the position of the first tenant.

4. The creation of the ijara by defendant 20 in the present case in favour of the plaintiff cannot, in my opinion, be said to have prejudiced in any way the position of the defendants patnidars. The defendants patnidars were liable to pay their rent to the zamindar and if the zamindar transferred his right to realize rent from the patnidars, to the plaintiff by the document that was created in favour of the latter the position of the defendants patnidars was not prejudiced in any way. Holding therefore that a zamindar who has carved out a tenure is competent to interpose between himself and his tenants an intermediate holder, I am of opinion that the defendants patnidar would not in the present case escape from his liability to pay rent to the plaintiff. In the result I would dismiss the appeal with costs to the plaintiff respondent only.

Jack, J.

5. I agree.

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