

Usha Prova Dey Vs. Hriday Bashini

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Court : Kolkata

Decided On : Mar-16-1943

Reported in : AIR1944Cal389

Appellant : Usha Prova Dey

Respondent : Hriday Bashini

Judgement :

Edgley, J.

1. This Rule arises with reference to a proceeding under Section 145, Criminal P.C. in which a dispute had arisen with regard to some plots of lands in a hat which were claimed by the first party as belonging to certain ganti tenures which had been created before the creation of a patni tenure which was purchased by the petitioner on 15th May 1939. The case for the second party was to the effect that, on 15th May 1939, she had purchased a patni including the disputed land at a patni sale held under the provisions of Patni Taluks Regn. 8 of 1819. According to her case notices annulling all the sub-tenures under the patni were served on 23rd July 1940, but, in spite of these notices, she was not allowed to take peaceful possession of the property which she had purchased. Thereafter, on 5th November 1940, the second party made an application to the District Judge to the effect that a proclamation might be served under the provisions of Section 15 (2), Patni Taluks 'Regulation. An enquiry seems to have been held by the learned

District Judge at which Anukul Chandra Banerjee, one of the vendors from whom the members of the first party derived their interest was present. His objection seems to have been to the effect that as certain darpatnis were still in existence, the proclamation should not be issued. The learned Judge decided that the darpatnis had ceased to exist and that the petitioner was entitled to the protection which she sought. He therefore ordered that the proclamation should issue. Thereafter, on 13th March 1941 the proclamation was alleged to have been served by a peon of the civil Court, but in spite of this alleged service the second party does not appear to have obtained possession, with the result that, on 18th March 1941, she made a further application to the District Judge for police help in the matter. Her case was to the effect that she obtained possession through the police on 20th March 1941 and remained in possession, at any rate until 31st March 1941 when she was again obstructed, with the result that proceedings had to be instituted under the provisions of Section 145, Criminal P.C.

2. The findings of the learned Magistrate were to the effect that the first party was in possession of the disputed property, that there was no dependable evidence to show that the second party had ever exercised actual physical possession of the property in dispute and that there was strong evidence to show that there was no break in the continuity of possession of the first party. The learned Magistrate also held that it had been proved beyond reasonable doubt that the first party had collected tolls from the hat without any break and that the second party had never made any collection. With regard to the question as to the date of the creation of the disputed ganti tenures, the learned Magistrate held that these tenures had come into existence before the creation of the patni. On these findings the learned Magistrate declared the first party to be in possession of the disputed property and forbade every disturbance to such possession until eviction by the civil Court. A good deal of discussion has centred round the question whether the learned Magistrate had jurisdiction to hold that the ganti tenures were in fact created before the creation of the patni which was purchased by the second party on 15th May 1939. It is contended by Mr. N. K. Basu that in effect the second party had been put into possession of these gantis rightly or wrongly by the Order of the civil Court and that this lady was entitled to retain possession until she was duly evicted as a result of a civil Court decree. It may be mentioned that, when the

learned Judge decided on 27th February 1941, that a proclamation should issue, his judgment contained no finding with reference to the existence or non-existence of the disputed ganti tenures. Obviously, in deciding that the proclamation should issue the learned Judge could only decide that such a proclamation should issue in accordance with the statutory provisions which regulate this matter. Section 15 (2), Patni Taluks Regulation, provides that:

When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself or the holders of tenures or assignments derived from the late incumbent and intermediate between him and the actual cultivators, shall attempt to offer opposition...a proclamation shall then issue...declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamindar,-acquired the entire rights and privileges attaching to the tenure of the late talukdar, in the state in which it was originally derived by him from the zamindar, he alone will be recognized as entitled to make the zamindari collection in the mufassal.

The terms of the proclamation which was actually issued as a result of the Order of the learned Judge, dated 27th February 1941, have been placed before us. This proclamation was strictly in accordance with the terms of Section 15 (2), Patni Taluks Regulation, and it appears that as a result of this proclamation the second party could only be placed in possession of the patni in the state in which it was originally derived by the late incumbent from the zemindar. This being the case when, at a later stage of the proceedings, a dispute arose whether or not the second party had taken possession of the disputed gantis under the proclamation, it became essential for the learned Magistrate during the course of the proceedings under Section 145, Criminal P.C. to decide this point after finding whether these gantis had been created before or after the date on which the patni itself came into existence. He has decided in fact that these gantis were created before the patni which was purchased by the second party on 15th May 1939. It is clear from the facts which have been found, from the terms of the proclamation and from the provisions contained in Section 15, Patni Taluks Regulation, that the second party did not actually obtain possession of these gantis as a result of any proceedings taken after her purchase of the patni. The findings contained in the

judgment of the learned Magistrate must be regarded as findings of fact. In this view of the case the Rule fails and must be discharged.

Sen, J.

3. This Rule was obtained by the second party against an Order passed in proceedings under Section 145, Criminal P.C. The second party's case is that she as purchaser of a patni at a sale under the Patni Sales Law, obtained possession of the property sold and that thereafter the first party was attempting to dispossess her. The case of the first party is that they were the owners of a ganti right over the land and that their ganti tenure was created before the patni was created and consequently could not be and was not annulled by the sale under P,atni Sale Law and the proceedings held thereunder. They claimed that they had been in possession of the land as gantidars uninterruptedly and that the steps taken by the second party did not result in their being dispossessed. The finding of the Court below is that the ganti tenure possessed by the first party was created before the creation of the patni and that it could not be and was not annulled. The second finding is that the gantidars who are the first party remained in uninterrupted possession and that they were not dispossessed by the steps taken by the second party subsequent to the purchase of the patni. On these findings the possession of the first party was declared and main-tained. This Rule was obtained on only one ground which is as follows:

For that it having been found as a fact that your petitioner was in possession from 20th to 31st March 1941, the Order of the learned Magistrate is without jurisdiction and illegal.'

4. On going through the Judgment of the Court below I find there was no such finding at all. On the contrary, the finding of the learned Magistrate is that the first party was in possession uninterruptedly without any break. The Rule should, therefore, be discharged on the ground that there is no such finding as that mentioned in the ground upon which the Rule was issued. Mr. Basu, however, contends that on the facts found by the learned Magistrate he was not entitled in law to come to any other finding but that the petitioner was in possession of the

land from 20th to 31st March 1941 and he bases this contention on certain facts which I shall now mention. After purchasing the patni the second party could not get possession and she had to take recourse to the provisions of Section 15, Patni Sale Law. She applied for the aid of the civil Court under Section 15 (2), Patni Sale Law for the purpose of obtaining possession. The Court heard the matter in the presence of the second party and some persons who had already sold their interest in the ganti tenure to the first party. Those persons were claiming a darpatni interest and not a ganti tenure. The first party did not appear. The civil Court issued a proclamation and thereafter a police help was taken by the second party'. Mr. Basu argues that the fact that the proclamation was issued and that police help was taken had the effect of giving possession to the second party even if actual possession had not been given. I may mention here that at the time the question whether or not the proclamation should issue was being decided by the civil Court, the point whether this ganti was still in existence or not was never raised or decided. In my opinion, the mere fact that the proclamation was issued and that police help was taken does not necessarily mean that the first party was dispossessed in law. I have said before that the finding is that there was no actual dispossession. The learned Magistrate has found that the police were not able to dispossess the first party. The effect of the proclamation was merely to give the purchaser a declaration that he had obtained the patni in the state in which it was when it was created and that no payments made to any other individual would be credited to the raiyats or others who were sued for rent or on any other occasion whatever when the same may be pleaded.

5. It is well established that a purchaser at a patni sale gets the patni as it existed at the time of its creation and that tenures created prior to the creation of the patni are not affected by the sale. The proclamation issued under Section 15 (2), Patni Sale Law, declares nothing more than this and it cannot be said that merely because a proclamation was issued and steps were taken to give effect to the proclamation the owners of tenures created before the patni were dispossessed. There is accordingly no substance in the contention of Mr. Basu that the possession of the first party was put an end to by the issue of the proclamation under Section 15 (2), Patni Sale Law, or by the action taken by the police in the proceedings subsequent to the rule. I therefore agree with my learned brother that

this Rule should be discharged.

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