

Neogendra Mohan Ray and anr. Vs. Pyari Mohan Saha and ors.

Neogendra Mohan Ray and anr. Vs. Pyari Mohan Saha and ors.

SooperKanoon Citation : sooperkanoon.com/872821

Court : Kolkata

Decided On : Apr-28-1914

Reported in : AIR1915Cal339,30Ind.Cas.420

Judge : Asutosh Mookerjee and; Chapman, JJ.

Appellant : Neogendra Mohan Ray and anr.

Respondent : Pyari Mohan Saha and ors.

Judgement :

1. This is an appeal by the plaintiffs in a suit for declaration of title to land and for ejectment of the defendants therefrom. The case for the plaintiffs is that the disputed lands were included in a revenue-paying estate owned by themselves and by their co-sharers and that the defendants held them as a tenure under the co-sharers, to whose exclusive share they had been assigned by private partition. Thereafter, on a partition of the entire estate by the Collector under the Estates Partition Act, these lands were allotted to the plaintiffs, but they were unable to obtain possession thereof, as the defendants set up their right to hold them as their tenure. The plaintiffs accordingly instituted this suit to establish their title and to eject the defendants on the ground that their tenure was operative, not upon the lands assigned to the plaintiffs, but upon those assigned to their grantors. The defendants denied the truth of the allegation of a prior private partition amongst the proprietors, and asserted that as their tenure was held under all the co-sharers, the plaintiffs were not competent to avoid it. On these pleadings, the issue

was raised, whether there was a private settlement among the proprietors as regards the possession of the lands of the original estate as stated in the plaint. The trial Court found on the evidence that there was a private settlement among the co-sharers of the estate whereby each of them came to be in separate possession of distinct parcels of land. The Court also found that the tenure was held not under the entire body of co-sharers but under some of them only and that of the share owned by the plaintiffs, 1 one twelfth had been derived from the grantor of the tenure. The Court thereupon held that the plaintiffs were entitled to eject the defendants from the remaining share of the lands. On appeal by the defendants, the Subordinate Judge affirmed the finding of the first Court that there was a private division of the lands to which all the joint proprietors had agreed and upon which they had all acted. In this view, the Subordinate Judge held that the partition by the Collector had not affected the tenure, as the defendants were not and could not be parties to the partition proceedings, and that the plaintiffs had taken the lands allotted to them subject to the tenure held by the defendants. The plaintiffs have appealed to this Court against the decree of dismissal made by the Subordinate Judge, and have contended that under Section 99 of Act V of 1897 B.C., the lands in their hands are not subject to the tenure set up by the defendants. In support of this view, reliance has been placed upon the decision of *Joy Sankari Gupta v. Bharat Chandra Birdhan* 26 C. 434 : 3 C.W.N. 209.

2. Section 99 of the Estates Partition Act is in these terms: If any proprietor of an estate held in common tenancy and brought under partition in accordance with this Act has given his share or a portion thereof in putni or other tenure or on lease or has created any other encumbrance thereon, such tenure, lease or encumbrance shall hold good as regards the lands finally allotted to the share of such proprietor and only as to such lands.' It is hence essential, to make the section applicable, that the estate should be held in common tenancy. On behalf of the appellants, it has been contended that an estate must be deemed held in common tenancy so long as any incident thereof, for example, the liability to pay Government revenue, continues joint, although the lands may have been divided and are held in severalty. This contention is opposed to the decision in *Abdul Latif v. Amanaddi* 9 Ind. Cas. 539 : 15 C.W.N. 426; there it was held that the words estate held in common tenancy are used in contradiction to an estate held in severalty among

the proprietors themselves by private arrangement, as is clear from an examination of Sections 5, 7, 63, 76 and 79 of the Estates Partition Act. This decision is in conformity with the earlier case of Hridoy Nath v. Mohobutnessa Bibee 20 C. 285 which interpreted the corresponding section of an earlier Statute (Section 128 of Act VIII of 1876, B.C.). An examination of the decision in Hridoy Nath v. Mohobutnessa Bibee 20 C. 285 shows, again, that the view there taken 'as in accord with a long line of authorities decided under the corresponding provisions of Regulation XIX of 1814: Ahmedullah v. Ashruff Hossein 13 W.R. 447 : 8 B.L.R. App. 73 note; Obhoy Churn v. Huri Nath Roy 8 C. 72 : 10 C.L.R. 81 : 6 Ind. Jur. 246; Juggessur Doyal Singh v. Bissessur Pershad 12 C.L.R. 281. The position, therefore, is that under the Estates Partition Act, 1876, this Court, on an elaborate review of the previous state of law, came to the conclusion in Hridoy Nath v. Mohobutnessa Bibee 20 C. 285 that the principle embodied in Section 128 was applicable only where the lands of the estate were not held in severalty. The Legislature, in 1897, proceeded, presumably with full knowledge of the judicial interpretation of Section 128, to reproduce its provision without any variation as Section 99 of Act V of 1897. The inference seems irresistible that the judicial interpretation of Section 128, to which we have referred, correctly represented the intention of the Legislature; for it is a well-settled principle of construction that the Legislature is presumed to know, not only the general principles 'of law, but the construction which the Courts have put upon particular Statutes. In the words of Lord Campbell, C.J., in Mansell v. Reg. (1857) 8 El. & Bl. 54 at p. 73 : Dears & B. 375 : 27 L.J.M.C. 4 : 120 E.R. 20 : 112 R.R. 468 and James, L.J., in Ex-parte Campbell, In re Cathcart (1870) 5 Ch. App. 703 : 23 L.T. 289 : 18 W.R. 1056, 'Where a section of an Act, which has received a judicial construction, is re enacted in the same words, such re-enactment must be treated as a legislative recognition of that construction.' The inference is, therefore, perfectly legitimate that the Legislature has, in the new Act of 1897, adopted the settled judicial construction, which is thereby sanctioned and intended to be continued in force: Jogendra Chundra Roy v. Syam Das 1 Ind. Cas. 168 : 36 C. 543 at p. 546 : C.L.J. 271. We hold accordingly, on the authority of the decision in Haridoy Nath v. Mohobutnessa Bibee 20 C. 285 which has been accepted as good law applicable to Act V of 1897 in Aimanaddi Patari v. Nabin Chandra Cope 5 Ind. Cas. 307 : 11

C.L.J. 95 and Abdul Latif v. Amanaddi 9 Ind. Cas. 539 : 15 C.W.N. 426 that Section 99 applies only where the lands are held jointly by the proprietors, and not in severalty in pursuance of a private arrangement between the parties. This view is not opposed to the decision in Joy Sankari Gupta v. Bharat Chandra Birdhan 26 C. 434 : 3 C.W.N. 209 where the lands were hold not in severalty but in common tenancy. In these circumstances, it was ruled, on the authority of the decision of the Judicial Committee in Byjnath hall v. Ramoodeen Chowdhry 1 I.A. 106 : 21 W.R. 233 that when on partition by the Collector, any land of an undivided joint estate, which had been encumbered by any co-sharer, was allotted to any other co-sharer, the latter took it free from the encumbrance so created. But we may observe that the decision in Ahmedullah v. Ashruff Hossein 13 W.R. 447 : 8 B.L.R. App. 73 note which was followed in Hridoy Nath v. Mohobutnessa Bibee 20 C. 285 is not, as is assumed in Joy Sankari Gupta v. Bharat Chandra Birdhan 26 C. 434 : 3 C.W.N. 209 inconsistent with, and has not consequently been overruled in effect by, the decision of the Judicial Committee in Byjnath Lall v. Ramoodean Chowdhry 1 I.A. 106 : 21 W.R. 233. As explained in Hridoy Nath v. Mohobutnessa Bibee 20 C. 285 which was not brought to the notice of the Court in Joy Sankari Gupta v. Bharat Chandra Btrdhan 26 C. 434 : 3 C.W.N. 209 the lands in Ahmedullah v. Ashruff Hossein 13 W.R. 447 : 8 B.L.R. App. 73 note were held in severalty; while the lands in Byjnath Lall v. Ramoodeen Chowdhry 1 I.A. 106 : 21 W.R. 233 were held in common tenancy. This distinction explains cases of Venkatarama Iyer v. Esumsa Rowthen 5 Ind. Cas. 92 : 7 M.L.T. 143 : 33 M. 429 : 20 M.L.J. 330; Shaikh Nura v. Baikuntha Nath Ray 30 Ind. Cas. 398 : 21 C.L.J. 596; Brojonath Saha v. Dines Chandra Neogi 30 Ind. Cas. 418 : 21 C.L.J. 599 and Tarini Kanta v. Ishur Chandra 29 Ind. Cas. 240 : 21 C.L.J. 603 where the decision in Joy Sankari Gupta v. Bharat Chandra Btrdhan 26 C. 434 : 3 C.W.N. 209 was followed. In the case before us, the Courts below have concurrently held that the lands were, under private arrangement, held in severalty and not in tenancy in common; consequently Section 99 of Act V of 1897 has no application. The inference follows that the plaintiffs have taken the disputed lands subject to the tenure of the defendants and are not entitled to eject them.

3. It has finally been argued that the defendants should not be allowed to defeat the claim of the plaintiffs, when it has been found that their allegation is untrue on

the facts. In our opinion there is no force in this contention. We doubt, as was laid down in the cases of *Shibkristo v. Abdool Hakeem* 5 C. 602 : 5 C.L.R. 455; *Ramdoyal v. Junmenjoy* 14 C. 791 at p. 793 and *Balmukund Kesurdas v. Bhagwandas Kesurdas* 19 Ind. Cas. 401 : 15 Bom. L.R. 209 a plaintiff cannot be allowed to abandon his own case, adopt that of the defendant and claim relief on that footing. Here, however, what has happened is that each party failed to realise the legal effect of the facts alleged by him; the parties went to trial on the substantial issue in the case, namely, whether or not there had been a private partition of the lands prior to the partition by the Revenue Authorities and whether the tenure of the defendants was created by the entire body of landlords or by some alone of the shareholders in respect of specific lands allotted to them. This question has been answered against the defendants and in favour of the plaintiffs but that does not prevent the defendants from contending that even on the facts found the claims for ejectment cannot be sustained.

4. The result is that the decree of the Subordinate Judge is affirmed and this appeal dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com