

Arsadulla and ors. Vs. Munseb Ali

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Court : Kolkata

Decided On : Apr-02-1912

Reported in : 14Ind.Cas.349

Judge : D. Chatterjee and ;N. Chatterjea, JJ.

Appellant : Arsadulla and ors.

Respondent : Munseb Ali

Judgement :

1. The plaintiff-respondent sued for khas-possession of the land in dispute which he had purchased at a sale held in execution of a decree for arrears of rent. The decree for rent was obtained by Ali Meah and others (the heirs of one Sameer Ali) who are said to have a royati interest in the lands, against the defendants Nos. 3 and 4, who, it is alleged, were undev-7-aiyats under them. Plaintiff after his purchase served a notice under Section 167 of the Bengal Tenancy Act for annulling the incumbrance of defendants Nos. 1 and 2.

2. The defendants Nos. 1 and 2 denied both the royaii title of Ali Meah and others, and the under-royati title of defendants Nos. 3 and 4 and set up their own royati right to the land.

3. The Court of first instance disbelieved the evidence on behalf of the plaintiff and held that Ali Meah and others had no royati right and defendants Nos. 3 and 4 had no under-royati right and that their title, if any, had been extinguished by adverse

possession for 12 years on the part of the defendants Nos. 1 and 2.

4. On appeal, the learned District Judge, though he does not say in so many words, that the royati right of Ali Meah and others had been proved, believes the evidence adduced on behalf of the plaintiff to show the under-royati title of defendants Nos. 3 and 4 derived from Sameer Ali, and he must be taken to have found that Ali Meah and others had a royati title, and the defendants Nos. 3 and 4 had an imder-royati title. He also found that defendants Nos. 1 and 2 were trespassers and that adverse possession must be held to be an incumbrance which can be avoided by an auction-purchaser and in the result set aside the decree of the Munsif and remanded the case for decision on the remaining' issues.

5. Defendants Nos. 1 and 2 have appealed to this Court against the order of the District Judge and it has been contended on their behalf that adverse possession is not an incumbrance within the meaning of Section 161 of the Bengal Tenancy Act. We agree, however: with the decision of Mookerjee and Carnduff, JJ., in the case of Gokul Bagdi v. Debendra Nath Sen 11 Ind. Cas. 453 : 14 C.L.J. 136 (where the question has been fully discussed) in holding that the word 'incumbrance' as used in Sections 159 and 161 of the Bengal Tenancy Act includes a statutory title acquired by a trespasser by adverse possession of the land of a defaulting tenant. But although adverse possession is an incumbrance within the meaning of Section 161 of the Bengal Tenancy Act, a question arises as to whether land held by an under-raiyat can be sold in execution of a decree for arrears of rent under the special procedure prescribed in Chapter XIV of the Bengal Tenancy Act, so that the purchaser can annul incumbrances created by the xxnder-raiyat.

6. The rights of an xxnder-raiyat may be sold by the landlord under the Civil Procedure Code but the question is whether such lands can be sold under the special procedure prescribed in the Bengal Tenancy Act with the consequences attached to sales held under that Procedure. Section 65 of the Bengal Tenancy Act provides that where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy raiyat, he shall not be liable to ejectment for arrears of rent but his tenure or holding shall be liable to sale in execution of a decree for the

rent thereof and the rent shall be a first charge thereon. That section, therefore, does not provide for a sale of land held by an under-raiyat in execution of a decree for arrears of rent thereof.

7. In the present case, the plaintiff wants to take possession on the ground that he has complied with the provisions of Section 167 of the Bengal Tenancy Act. Section 167, however, applies only when a sale takes place under Chapter XIV of the Act.

8. Now Chapter XIV of the Bengal Tenancy Act makes provision only for the sale of a tenure or holding. Under Section 3 (9), 'holding' means a parcel or parcels of land held by a raiyat. The Act makes a clear distinction between a raiyat and an under-tenant and it would appear, therefore, that land held by an under-raiyat is not a holding' within the meaning of the Act. The word 'holding', however, has been used with reference both to a raiyat and an under-raiyat in Sections 121 and 122 relating to distraint and also in Section 113 in the amended Chapter X of the Act. In order to reconcile the use of the word 'holding' in Sections 113, 121 and 122 with the meaning assigned to it in Section 3(9) of the Act, and having regard to the provision contained in Section 3 that unless there is something repugnant in the subject or context the word holding' is to have the meaning assigned to it in Sub-section (9), we must hold that except where the Legislature has used the word holding' expressly with reference to lands held by an under-raiyat, that word must be taken to have, in other sections of the Act, the meaning assigned to it in Section 3(9) and in that view the word 'holding' in Chapter XIV of the Act does not include lands held by an under-raiyat. That being so, the provisions of Chapter XIV of that Act, do not apply to a sale of lands held by an under-raiyat.

9. There is no provision in Chapter XIV for the sale of lands held by an under-raiyat nor for annulment of incumbrances created by an under-raiyat. The reason probably is that, an under-raiyat, can not only be ejected for non-payment of arrears of rent as provided in Section 66 but can be ejected on the expiration of the term of a written lease, and at the pleasure of the landlord when holding otherwise than under a written lease, after service of a notice to quit. The incumbrance of the defendants Nos. 1 and 2, therefore, cannot be annulled by the

plaintiffs, and the claim for khas possession must be disallowed. The plaintiff, however, prayed in the alternative that a decree for proper rent might be passed and the 7th issue raised the question 'what relief, if any, is plaintiff entitled to'; we think that issue ought to be decided.

10. It is accordingly ordered that the case be sent back to the Court of first instance for disposal after deciding the issue indicated above. As the ground upon which our decision is based was not raised by the appellants in any Court we direct that each party will bear his own costs up to this stage. Future costs to abide the result.

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