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Court : Kolkata

Decided On : Aug-09-1928

Reported in : AIR1929Cal253,117Ind.Cas.536

Appellant : Golbar Bibi and ors.

Respondent : Aswini Kumar Sinha Roy and ors.

Judgement :

Suhrawardy, J.

1. These are appeals by defendants 4 to 7 against the decree of the Subordinate Judge of Tippera dated 11th May 1926. Defendants 1 to 3 had a jote under a sikmi taluk in which the respondents, the appellants and some others are jointly interested. In execution of a money decree the plaintiffs purchased the holding in 1912. But it appears that they did not get possession of the same. In 1914 the appellants obtained a money-decree against the same tenants and sold the holding and obtained possession thereof. Thereupon the plaintiffs brought these two suits for recovery of possession of the lands included in the holding from the defendants. The defence was that the plaintiffs had no right in the sikmi and that the plaintiffs being part-owners of the sikmi were not legally entitled to evict the defendants who were also proprietors of the same taluk and were in possession by virtue of their auction-purchase. It was also pleaded that the tenancy being nontransferable the plaintiffs had acquired no right to it. Both the Courts below

made a decree in favour of the plaintiffs minus the defendants' share which is two annas three gandas.

2. Defendants 4 to 7 have appealed and it is argued on their behalf that the view of the law taken by the Courts below is wrong. It is contended that the tenancy being a nontransferable occupancy holding, Section 22, Ben. Ten. Act does not apply and that the plaintiffs by virtue of their purchase have acquired no right. In support of this contention reliance has been placed upon *Ginsh Chandra Chowdhury v. Kedar Chandra Roy* [1900] 27 Cal. 473 and *Lakhi Kanta Das v. Balbhadra Prosad Das* [1914] 19 C.L.J. 400. These cases were, however, decided on the law as it stood before the amendment of the Bengal Tenancy Act in 1908. The law as is now laid down by the authorities on this point will be considered later. Though the defendants in their written statement said that the tenancy was a nontransferable occupancy holding, the trial Court proceeded upon the assumption that Section 22 applied to the case. This was due to the fact that in the Record-of-Rights on which the defendants base their claim the defendants were recorded as being in possession as cosharers maliks under Section 22, Ben. Ten. Act. In this state of things the case proceeded under Section 22 and the judgment of the Court below does not give any indication whatsoever that the question of transferability or nontransferability of the holding was ever mooted. The case in the lower appellate Court seems to have been argued on the basis of Section 22 and the decision arrived at by that Court is also passed with reference to that section. I will, therefore, first of all examine the correctness of the decision of the Court below with reference to Section 22, Ben. Ten. Act. Clause (2) as amended by Act 1 of 1908 East Bengal and Assam is:

if the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, such person shall have no right to hold the land as a raiyat, but shall hold it as proprietor or permanent tenure-holder, as the case may be, and shall pay to his cosharers a fair and equitable sum for the use and occupation of the same.

3. It means in simpler language that if a cosharer landlord purchases an occupancy holding which should be a transferable occupancy holding, he is

entitled to hold it not as a raiyat, but as a tenure-holder in the right which he has in the tenure subject to payment of a fair and equitable rent to the other cosharers. The object of the amendment has been explained in *Purna Chandra Boy v. Mathura Mohan Saha* A.I.R. 1923 Cal. 210, where the law is thus stated:

The effect of the amended section is that the occupancy holding disappears, and the purchaser holds the land as a joint proprietor or joint tenure-holder, as the case may be. To put the matter briefly, the purchaser enjoys the land in his character of proprietor or tenure-holder and not as a raiyat. But, as upon the disappearance of the tenant right, all the holders of the superior interest would prima facie be entitled to possession, that one amongst them who is allowed to keep exclusive possession of the land is made to pay his cosharers a fair and equitable sum for such use and occupation.

4. By the plaintiffs' purchase in 1912 they acquired the holding divested of its character as an occupancy holding and also obtained under Section 22 the right to possess the land subject to payment of a fair and equitable amount to their cosharers. By their purchase of the same holding in 1914 the defendants did not purchase anything because whatever interest the tenants had in the land had already been sold to the plaintiffs in 1912. The defendants must, therefore, be taken to be trespassers and this position has not been seriously denied. Under Section 22 the plaintiffs had the right to the recovery of possession of the entire land from the defendants, But the Courts below have given them a decree in respect of the land less the defendants' share and they were satisfied with it.

5. Now, assuming that the holding was a non-transferable occupancy holding, according to the decision of the Full Bench case of *Dayamoyee v. Ananda Mohan* [1915] 42 Cal. 172, the plaintiffs by their purchase acquired a good title to the land against every person except the landlord. The Full Bench decision does not particularly deal with the case of a cosharer landlord, but it cannot be disputed that by 'landlord' is meant 'the entire body of landlords' or 'the 16 annals landlord.' A cosharer landlord can only object to the sale of the holding to the extent of his own share. By the sale of a nontransferable occupancy holding a raiyat is not entitled to question the legality of the sale; the only person who can challenge its validity is

the landlord. It is hardly to be presumed that a cosharer landlord is entitled to object to the sale of the entire holding for it is possible the other cosharers have acquiesced in the sale or accepted the transfer. It has been held that where a cosharer landlord purchases a holding, another cosharer has a right to recover possession of the property to the extent of his own share. *Dilbar Sardar v. Hosein Ali Bepari* [1899] 26 Cal. 553 and *Kanchan Mandar v. Kamala Prosad* [1915] 21 C.L.J. 441. In the last case the law is thus stated:

In the event of a sale of a nontransferable occupancy holding, the purchaser can be evicted by any of the cosharer landlords to the extent of his own share, and if possession of the entire holding has been acquired by some of the cosharers the other cosharers are entitled to joint possession thereof.

The logical conclusion from this view is that when a cosharer landlord takes an unlawful possession of a holding another cosharer purchaser of the holding is entitled to recover possession from him except to the extent of the share of the cosharer. Looking at the question as it has been raised before us, it does not seem to have been discussed in any of the reported cases. From all points of view the decree of the lower appellate Court seems to be unassailable.

6. A good deal of argument was founded on same observations of their Lordships of the Judicial Committee in the case of *Midnapur Zemindary Co. v. Naresh Narayan Roy* A.I.R. 1924 P.C. 144: at p. 296 (of 51 I.A.) their Lordships say:

No cosharer can, as against his cosharers, obtain any jote right, a right of permanent occupancy, in the lands held in common, nor can he create by letting the lands to cultivators as his tenants any right of occupancy of the lands in them.

This is a reproduction of Clause 2 and 3 of Section 22. Liter on their Lordships observe:

Even if the Midnapur Company purchased any jote rights in lands held in common by the cosharers, such a purchase would in law be held to have been a purchase for the benefit of all the cosharers, and the jote rights so purchased would by the purchase be extinguished.

A great deal of stress has been laid upon the word ' benefit ' in the passage quoted. What their Lordships meant is that if a cosharer purchases land held in common by him and his cosharers, he would hold by virtue of such purchase the land to the benefit of the other cosharers, namely, he would be liable to pay fair and equitable rent to them; but the jote right so purchased would be extinguished. Even if the word ' benefit' in their Lordships' judgment means ' on behalf of ' or ' subject to the right of the joint possession by the other cosharer landlord, the plaintiffs' suit for recovery of possession against the defendants would not be affected by what their Lordships said. The defendants being trespassers and having no right to remain on the land and the plaintiffs claiming recovery of possession of the land under a semblance of title which gives them the right to present possession plaintiffs are entitled to succeed. If in future other cosharers come in and claim possession of their shares from the plaintiffs and if it is proved that the land is a nontransferable occupancy holding, they will be under the law entitled to obtain joint possession with the plaintiffs to the extent of their shares.

7. The result is that the appeals fail and are dismissed with costs.

Garlick, J.

8. I agree. The plaintiffs purchased the holding, and the defendants, as cosharers of the taluk, can only object to the plaintiff's possession of the land of the holding so far as their own share of the taluk is concerned.

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