

Arjun Chandra Mandal and ors. Vs. Trailakya Mani Dassi and ors.

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Court : Kolkata

Decided On : Dec-13-1932

Reported in : AIR1933Cal610

Appellant : Arjun Chandra Mandal and ors.

Respondent : Trailakya Mani Dassi and ors.

Judgement :

Mukerji, J.

1. This is an appeal preferred by the plaintiffs who had instituted a suit for recovery of khas possession of certain lands from the defendants. The subject-matter of the suit were certain lands and a hut constituting an under-tenancy which was created by one Brahmamoyi, a Hindu widow, so far back as 1898. The under-tenancy was created by a document which purports to have been a permanent lease granted by the said Brahmamoyi in favour of the defendants. The document is a registered one. By this document she purported to create a permanent under-tenancy in the lands in respect of which she said that she had a Kaymi Mourashi right, In 1915-16 there was a settlement Record of Rights in which the rights of the defendants were recorded as being those of a Korfa tenant with a right of occupancy acquired by custom. Brahmamoyi died some time about the year 1332, Thereafter, the plaintiffs, as reversioners to the estate of Brahmamoyi's husband, had instituted the present suit for ejecting the defendants. The trial Court decreed the suit.

2. The Subordinate Judge has reversed the decision of the trial Court and has dismissed the suit. The principal question in the case was as to whether the lease that was granted by Brahmamoyi in favour of the defendant was justified by legal necessity. The trial Court appears to have recorded some findings which would go to indicate that it was not satisfied as to the bona fide character of the lease and yet towards the end of its judgment the said Court laid down a condition on which the plaintiffs would be entitled to recover khas possession. The condition so laid down was that an amount of Rs. 50 which defendant 1 alleged that he had paid to Brahmamoyi on account of this lease together with interest at the rate of 6 per cent per annum from the date of the lease to the date of the suit would have to be paid within a month of the date of decree. The trial Court ordered that if this condition was fulfilled the plaintiffs would be entitled to eject the defendants.

3. The Subordinate Judge has held that there was no legal necessity for the transaction, but he has dismissed the suit holding that the defendants have acquired a right of occupancy. One of the arguments that has been addressed to me on behalf of the appellants is that the Subordinate Judge has not gone into the question of the bona fides or otherwise of the transaction and that if he had done so he could have held that the defendants who come upon the land as a result of a lease which was not granted bona fide could acquire no rights under it. It appears to me on a perusal of the judgment of the Subordinate Judge that this contention is not well founded. The learned Judge appears to have expressly referred to this condition which the Munsif had laid down and then he observed as follows:

I should say that the fact of the payment of the money by defendant 1 to Brahammamayee and of the latter's appropriation thereof for a just and commendable purpose does not by itself make the transaction as being one for legal necessity.

4. This passage, in my opinion, sufficiently indicates that while the learned Judge was prepared to agree with the trial Court that there was no justifying necessity for the transaction yet he had no doubt whatsoever that the money, that is to say Rs. 50, had been received by Brahmamoyi from defendant 1 and had been appropriated by her for a just and convenient purpose. This, in my opinion,

sufficiently shows that in the view which the learned Judge took of this transaction the transaction itself could not be condemned as not being a bona fide one. Now, the findings of both the Courts below are that there was no legal necessity for the permanent lease and the rest of the case will have to be considered on the basis of that finding.

5. The Subordinate Judge has declined to make a decree in plaintiff's favour upon the ground that although on account of the absence of legal necessity the permanent lease would not be binding on the plaintiffs, yet defendant 1 had, as a matter of fact, acquired a right of occupancy as is evidenced by the Records of Rights and that the plaintiff had not succeeded in establishing that the entry that is to be found there in favour of defendant 1 is incorrect. To challenge this view which the learned Judge has taken, an argument has been advanced on behalf of the appellants based on the provisions of Section 85, Ben. Ten. Act. It has been argued that as the Record of Rights is based entirely upon a tenancy which was created by the aforesaid permanent lease and as the said permanent lease is void by reason of the provisions of Section 85, Ben. Ten. Act, it should be held that defendant 1 had acquired no rights under the lease and therefore he had not also acquired a right of occupancy in respect of the land. With this contention I am not prepared to agree. It is quite true that a sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding 9 years. That is C1. 2, Section 85, Ben. Ten. Act.

6. This sub-lease therefore was not entitled to be admitted to registration and it follows that it cannot be put in as evidence of a transaction by which any right was created in favour of defendant 1 to be on the land. But the fact that as between Brahmamoyi on the one hand and defendant 1 on the other there was a transaction by which defendant 1 came upon the land as a tenant under Brahmamoyi is a fact which can be proved not merely by production of this document but also by other means. And whatever the validity or invalidity of this sub-lease may be, as between the two, Brahmamoyi would surely be bound to regard defendant 1 as tenant. While this was the position and a period of more than 12 years having expired since the date of the sub-lease, defendant 1 did acquire an occupancy right by custom as is evidenced by the entry which is there

in the Settlement Record of Rights. In these circumstances defendant 1 is perfectly entitled to discard the sub-lease altogether which he cannot put in evidence, but he can rely upon the fact that having come upon the land as a tenant under Brahmamoyi, a fact, which he is well entitled to prove, he did in point of fact acquire a right of occupancy which would protect him from eviction. I am of opinion, therefore that the learned Judge was right in holding that notwithstanding that the document is not admissible in evidence, defendant 1 is protected by the occupancy right which he acquired and which right is recorded in the Record of Rights. The learned Judge has pointed out that it was for the plaintiffs to show that the entry is wrong. Now, the plaintiffs in their plaint had undertaken to show that the entry was wrong by suggesting that there was fraud or at least collusion between Brahmamoyi and defendant 1 in consequence of which the entry came into existence.

7. I do not think that any evidence has been adduced to establish this position. The mere fact that the widow grants a permanent lease in excess of her necessity is not a fact from which fraud or collusion can necessarily be inferred. The only other way in which the correctness of this entry could have been challenged was by showing that the custom referred to in the decree does not in fact exist. On this point again no evidence appears to have been adduced on behalf of the plaintiffs, as the learned Judge also observed in his judgment. I am of opinion, that the view which the learned Judge has taken of this case is correct and the appeal accordingly must be dismissed with costs. Leave to appeal under Section 15, Letters Patent, has been asked for, but I do not consider that it is a fit case in which such leave should be granted.