

Joynath Sarkar Vs. Hari Mohan Das

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Court : Kolkata

Decided On : Jun-02-1919

Reported in : 59Ind.Cas.469

Judge : Asutosh Chaudhuri and ;Coming, JJ.

Appellant : Joynath Sarkar

Respondent : Hari Mohan Das

Judgement :

1. The plaintiff claims to be a service tenure-holder of the land in suit which is the debutter property of an idol, under defendants Nos. 1 and 2, the shebait. He made preparations for the worship and sheba of the idol and his father did similar service before him. He held this land in lieu of remuneration for the service he rendered and paid Rs. 12 a year to the shebait as cesses. This amount used to be Rs. 7 but it was enhanced to Rs. 12. He made default in payment of this amount on account of which a Suit (No. 898 of 1911) was instituted against him by defendants Nos. 1 and 2. It was decreed and in execution of that decree the jote was put up for sale and was purchased by defendant No. 3 on the 4th October 1912. The plaintiff then instituted this suit on the 20th April 1916 to recover possession of the jote alleging that the former suit was fraudulent; that he knew nothing about it; that in fact a wrong person, a name-sake of his, had been served, and that he knew nothing about the suit and decree. His case was that his right in the disputed land was a chakran right and that such right could not be attached or

sold; the attachment and sale of such a right was prohibited by law and the sale was, therefore, void and fraudulent and so defendant No. 3 by his purchase had acquired no right in the land and be prayed that the decree and sale might be declared void and fraudulent and not binding on him and possession should be restored to him.

2. The Trial Court held that no summons had been served on the plaintiff in that Suit No. 898 of 1911 and so he was not bound by the decree in that suit. He further held that the right which the plaintiff had was the right of a service-holder but that the sale certificate showed that a chakrani right had been sold. He found that there had been irregularities in the sale and so the plaintiff's title had not passed. He did not decide whether the right of a service-holder was saleable. On these findings he gave the plaintiff a decree for possession. On appeal the learned Subordinate Judge held that the decree in Suit No. 898 had been properly obtained and the execution proceedings under it properly conducted. The plaintiff had appeared in the execution proceedings. He, however, held that the right which the plaintiff held in the land was that of a service-holder, that the position of the plaintiff was that of a trustee, and that being so, the service-tenure was not liable to be sold. He held that Section 47, Civil Procedure Code, was not a bar to the suit. On these findings he dismissed the appeal.

3. It seems to us the learned Subordinate Judge has erroneously held that the plaintiff was a trustee of this land. The plaintiff did not hold a hereditary office of any kind in connection with the sheba or under the deity. His father and he were menial servants. Instead of remuneration for the work they did, they were allowed to take the profits of some land, possession of which had been made over to them. They had to pay Rs. 12 a year to the shebait for the land as cess. The land was not burdened with any service in connection with sheba. Hereditary character does not attach to it or the service, nor has it been shown to be service jote, or debutter chakran land. The learned Subordinate Judge has overlooked the distinction between the grant of an estate burdened with debsheba service and that of an office the performance of the duties of which is remunerated by the use of certain lands. See *Radha Pershad Singh v. Budhu Dashad* 22 C. 938 : 11 Ind. Dec. (N.S.) 622. There is a still greater distinction when the use is of a permissive character so

far as the servant is concerned, when the land is not burdened with any service. The plaintiff held under a special arrangement. He was liable to dismissal and the land could be resumed at once upon cessation of his service. He had not paid the annual cess and that was a breach of the arrangement between him and his employers. The plaintiff alleged in his plaint that he had 'enjoyed the land in lieu of rent for upwards of 12 years in succession to predecessors' by which we think he meant in lieu of service.' It is not shown he had an occupancy right. If the plaintiff held the land as a service-tenure he could not acquire a right of occupancy in it. See *Hurrogobind Raha v. Bamrutno Dey* 4 C, 67 : 2 Ind. Dec. (N.S.) 44. The sale certificate speaks of a chakrani jote. The learned Munsif understood by it a right of

4. Occupancy which is incorrect. Neither Court has found that a chukanidar has any kind of permanent right attaching to his jote. From the nature of the employment it is altogether unlikely that any permanency is attached to it. A chakrani jote is a subordinate jote under a jotedar. It is a korfa under tenancy, in the District of Rungpore, (Tagore Law Lectures) (see Phillips' Land Tenures). It is, so far as we know, the same in Jalpaiguri. The plaintiff was aware of the execution proceedings and knew what had been advertised for sale. He made a part payment to stop the sale. He did not then suggest that the tenure was not saleable. It was open to him to have the matter then determined but he refrained from taking any steps and now he has put forward false allegations before the Court and challenged the decree on the ground of fraud without any justification. Service tenures are exempted from the operation of Section 89, Bengal Tenancy Act. See *Mokbul Hossain v. Ameer Sheikh* 25 C. 131 : 13 Ind. Dec. (N.S.) 89.. In that case the plaintiff held the land in lieu of wages. He was dismissed and the land was held to have been rightly resumed.

5. It has also been argued that as the first suit was instituted by defendants Nos. 1 and 2 not as shebait the decree is inoperative. There is nothing which requires the manager of a temple or the shebait of debutter properties to bring such suits in a representative capacity. The relationship in this case was that of master and servant.

6. In *Juggodumba Dussee v. Paddomoney Dassee* 15 B.L.R. 318, Markby, J., held that, although the ownership of debutter property is vested in the idols, the shebait, strictly speaking, were not trustees for the idols, but managers, and, having regard to *Maharanee Shibessouree Bebia v. Mothooranath Acharjo* 13 M.I.A. 270 : 13 W.E.P.C. 18 : 2 Suth. P.C.J. 800 : 2 Sar. P.C.J. 528 : 20 E.R. 562, he said that there was this peculiarity that in all transactions including even litigation the managers carried them on in their own names. It has been held by the Privy Council that the possession and management of property dedicated to an idol belongs to the shebait, and that carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait and in the idol and that such right is a personal right. But no such question as has been raised before us can arise in matters connected with the employment or dismissal of or the recovery of claims against menial servants of a temple, persons who hold no office of a hereditary character. In the case of land admittedly belonging to the office of 'Gurav' and attached to it the Bombay High Court held in *Lotlikar v. Wagle* 6 B. 596 : 3 Ind. Dec. (N.S.) 853 that, although the property of the temple could not be sold away from the temple, there was no objection to the sale of the right, title and interest of such a servant of the temple in the land which he held as remuneration for his services, the interest sold being subject in the hands of the alienee to determination by the death of the original holder or his removal from office on account of his failure to perform the service. But in this case the land is not even burdened with any service. We are of opinion that, whatever right the plaintiff had as chukanidar or otherwise in lieu of his service, has been sold and he is not entitled to claim possession of the land. The plaintiff in this case went to the extent of filing a suit against the purchaser defendant No. 3 for a declaration that the auction purchase by the latter was a benami one. That itself is an admission that something passed by such purchase. What precisely is the right that defendant No. 3 has purchased is between him and defendants Nos. 1 and 2 but they are estopped from questioning the right of defendant No. 3 to hold the land as a chukanidar as he purchased in the execution of the decree they had obtained against the plaintiff. We also doubt whether this suit is maintainable having regard to Section 47, Civil Procedure Code, but having regard to our decision on the other points it is unnecessary to consider it.

7. The appeal is decreed with costs of all the Courts.

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