

Harendra Lal Roy Vs. Purna Chandra Chatterjee and ors.

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Court : Kolkata

Decided On : May-04-1910

Reported in : 14Ind.Cas.368

Judge : Mookerjee and ;Carnduff, JJ.

Appellant : Harendra Lal Roy

Respondent : Purna Chandra Chatterjee and ors.

Judgement :

1. There is no room for controversy as to the events antecedent to the litigation out of which the present appeal arises. The plaintiffs and the defendant are owners of estate Lot Amirpore, which bears No. 2469 on the revenue rolls of the Collector of the 24-Pergannahs. The extent of the share of the plaintiffs in the estate is three-fourths and that of the defendant one-fourth. It is not disputed that the parties used to deposit separately the share of the Government revenue respectively payable by them. The defendant, however, made default in payment of his share of the Government revenue due on the 12th January 1905. The result was that the estate was sold under Act XI of 1859 on the 27th March 1935, and, although its value is stated to exceed three lacs of Rupees, it was purchased by one Sanand Chandra Roy for Rs. 96,000. The plaintiffs then applied for reversal of the sale, substantially on the ground that the sale was irregular because the Touzi number had been erroneously stated in the sale proclamation and the name of the estate also had been wrongly given. It may be added that the defendant did not take any

steps to have the sale set aside, and the case of the plaintiffs throughout has been that the default on the part of the defendant was deliberately made with a view to enable him to purchase the estate free of the interest of the plaintiffs. It has been found by the Court below in the present litigation that the purchaser, Sanand Chandra Roy, was a benamdar of the defendant, and this position has not been controverted before us ; indeed, in view of the conduct of the defendant, it cannot be successfully challenged. The result of the application by the plaintiffs to have the sale set aside was that the Collector reversed the sale on the ground of irregularity. But he made an order, under Section 25 of Act XI of 1859, by which he directed that the applicants should, before the sale was set aside, pay to the purchaser interest on the purchase-money deposited by him. The plaintiffs carried out this order and then commenced the present action to recover from the defendant this sum as well as the costs incurred by them in the proceedings before the Revenue Authorities. They also seek to recover a proportionate share of the Government revenue paid by them on the occasion of subsequent defaults by the defendant, as also interest thereon. The foundation of the claim of the plaintiffs is fraud. Their case is that for many months before default was made by the defendant, negotiations were in progress for the execution of a putni lease by the plaintiffs in respect of their share of the estate in favour of the defendant and that the negotiations had been practically concluded, though there was some difference between the parties as to the precise terms upon which the lease was to be granted. They further allege that they had not the remotest suspicion that during the pendency of these negotiations, the defendant would wilfully commit default in payment of the Government revenue and bring about a sale of the property. The Subordinate Judge in the Court below has found that the plaintiffs are entitled to maintain the action and has made a decree in their favour.

2. The defendant has now appealed to this Court, and on his behalf, it has been contended that the plaintiffs are not entitled to maintain this action at all, that as a co-sharer of the plaintiffs, the defendant was entitled to commit wilful default in payment of the Government revenue, that the defendant though a defaulter was entitled to purchase the property and that the plaintiffs are at best entitled to claim contribution from the defendant in respect of the sums legitimately spent by them for the preservation of the property. The defendant has further contended that a

default on his part in payment of the Government revenue during the pendency of the negotiations for execution of a putni lease, cannot, properly, be described as fraudulent. In support of this position, reliance has been placed upon the cases of Ram Lal v. Jodunath 9 C.L.R. 337; Doorga Singh v. Sheo Pershad Singh 16 C. 194 and Gonesh Persad v. Pandey Brij Behary 1 C.L.J. 565. Reference has also been made to the decision of this Court in Lala, Rambeyaslal v. Sheoii Singh 5 C.L.J. 61 to show that a co-sharer in an estate, who makes wilful default in payment of his share of the Government revenue does not thereby become a tortfeasor. In answer to this argument, it has been contended by the learned Vakil for the plaintiff-respondent that the principle of law enunciated in the cases of Doorga Singh v. Sheo Pershad Singh 16 C. 194 and Gonesh Persud v. Pandey Brij Behary 1 C.L.J. 565 has been too broadly formulated, and that, in any event, that principle has no application to the present case in which the default of the defendant to pay Government revenue at a time when he was negotiating with the plaintiffs for the execution of a putni lease in their favour was fraudulent so as to bring the case within the rule laid down by this Court in the cases of Bhoobun chunder Sen v. Ram Soonder Sarma 3 C. 300 and Deonandan Singh v. Manbhodh Singh 8 C.W.N. 757. After a careful consideration of the arguments which have been addressed to us on both sides, we have no hesitation in holding that the plaintiffs have a good cause of action and that the decree which has been made in their favour must be sustained. The case of Ram Lal v. Jodunath 9 C.L.R. 337 upon which stress was laid by the learned Vakil for the appellant, is clearly distinguishable. In that case, a decree for rent had been made against some of the holders of a tenancy who had made default in payment of rent. The landlord executed the decree and at the execution-sale the tenure was purchased by one of the defaulters. The other defaulters then commenced an action for a declaration that they were entitled to the benefit of the purchase made by their co-sharer. It was ruled by this Court that the purchaser at the execution-sale was in no sense a trustee for his co sharers and that he could not be compelled to re-convey the property to the joint-tenants. This case clearly has no application to the circumstances of the present litigation. The other two cases upon which reliance is placed, namely, the cases of Doorga Singh v. Sheo Persud Singh 16 C. 194 and Gonesh Persad v. Pandey Brij Behary 1 C.L.J. 565 no doubt, broadly lay down the

proposition that a deliberate default on the part of a joint owner of an estate in payment of the Government revenue and a subsequent purchase by him at the revenue-sale with an intent to destroy the title of his co-sharers is not sufficient to make such purchaser a trustee for the other owners of the estate. It is not necessary for our present purpose to consider whether this rule is not too broadly formulated. It is sufficient to state that weighty reasons may be assigned in support of the contrary conclusion. For instance, it may be urged that a joint tenant, who deliberately makes default in payment of the Government revenue due on account of his share ought not to be allowed to use the machinery provided by law for the realization of the dues of the State, to injure the interest of his co-sharer. See Freeman on Co-tenancy, Section 158, Blackwell on Tax-titles, Section 571, Black on Tax-titles, Section 282; Venable v. Beauchamp 3 Dana 321 Hardy Vi Gregg (1887) 2 Southern 358. It is, however, unnecessary, as we have just stated, to consider the general question now, because we are clearly of opinion that the doctrine urged by the appellant, even if it were defensible, ought not to be further extended. The case of Lala Rambeyaslal v. Sheoji Singh 5 C.L.J. 61 which seems at first sight to lend some support to the contention of the appellant, appears upon closer examination to be clearly distinguishable. In that case, several co-sharers in an estate defaulted to pay the Government revenue. The result was a sale under Act XI of 1859 at which the property was purchased by these defaulters; The other co-sharers who had not defaulted brought a suit to set aside the sale on the ground of irregularity. That litigation was successful and the principal defaulter who was a party to that suit was made responsible for the entire costs of the litigation. He then commenced an action against his fellow-defaulters for contribution. It was ruled by this Court, under these circumstances, that the co sharers who had committed default did not thereby constitute themselves joint fort-feasors so as to make contribution impossible amongst themselves. It is not necessary for us to express any opinion as to whether this view may not be open to criticism. It is manifest, however, that it has no application to the circumstances of the present case. The case before us is, in fact, much stronger than the case of mere default on the part of a co-owner and the subsequent purchase by him at the revenue-sale, because in the events which have happened, we must hold that the conduct of the defendant was fraudulent. As we have already explained, for several

months before the date of default, negotiations had proceeded between the parties for the execution of a putni lease by the plaintiffs in favour of the defendant in respect of their share in the estate. No doubt, there were differences between the parties as to the precise terms on which such lease was to be granted. But it is manifest from the record that negotiations had not broken off. It was during the pendency of such negotiations that the defendant committed default, and eighteen days after the date of default, we find that one of the principal officers of the defendant wrote a letter to the plaintiffs about the execution of the proposed lease. The obvious result of the conduct of the defendant was to put the plaintiffs off their guard. As was pointed out by this Court in the case of Joy Chandra Banerjee v. Sreenath Chatterjee 32 C. 357 at p. 362 : 1 C.L.J. 23 it cannot be doubted that there may be cases in which there is deception by omission, but silence may be treated as deception only when there is a duty to speak; in other words, as Bigelow points out, a duty to speak which is the ground of liability arises wherever and only where silence can be considered as having an active property, namely that of misleading. Now in the case before us, the defendant was negotiating for a lease of this property. If he was honest and if he was in earnest, not only should he not have made wilful default in the payment of his share of the Government revenue, but if default had been made in payment of Government revenue by any other co-sharer, he should have brought such circumstance to the notice of his intended lessors. But the defendant did nothing of the kind; he deliberately defaulted and subsequently his officer addressed a letter to the plaintiffs the effect of which was completely to put the plaintiffs off their guard. If the plaintiffs had not been so misled, it is quite possible that they might have made inquiries before the sale as to whether there had been default or not, and they might have made an application under Section 18 of Act XI of 1859. If such an application had been made, it is more than probable that the sale would not have taken place. It is manifest, therefore, that the damages claimed by the plaintiffs are attributable directly to the misconduct of the defendant.

3. The result, therefore, is that the decree made by the Court below is affirmed and this appeal dismissed with costs.

