Deb NaraIn Dutt Vs. Baidta Nath Modak Napit and ors.

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Court : Kolkata

Decided On : May-10-1909

Reported in : 2Ind.Cas.148

Judge : Chitty and ;Vincent, JJ.

Appellant : Deb NaraIn Dutt

Respondent : Baidta Nath Modak Napit and ors.

Judgement :

1. The plaintiff in this suit seeks to establish his title in and to obtain possession of an eight anna share in certain lands described in the schedule to the plaint. The plaintiff purchased the 8 anna maliki right on this land in 1268 B.S. The land in suit was then in the possession of one Kasi Nath Napit and he executed a kabuliat in favour of the plaintiff in Phalgun 1268. After the death of Kasinath Jadu Napit his nephew succeeded to his rights in this land and on 17th of Baisak 1296 he sold the land to the defendant. The plaintiff now seeks to eject the defendant from the land on the ground that Jadu Napit had no transferable interest in the same and that the defendant is a trespasser.

2. The Minis if awarded the plaintiff a decree, granting him joint possession with the defendant, but on appeal this decision was reversed and the suit dismissed and the plaintiff, therefore, has lodged this second appeal. It is admitted before us that Kasi Nath was a raiyat of the village and the land in suit was apparently

originally let to him for horticultural purposes. It appears, therefore, (and this is not disputed in this Court) that in deciding the question of title to this land, the provisions of Act VIII of 1885 will apply.

3. The original tenant of the land, Kasi Nath was a raiyat. From the pleadings it cannot be said that he was a raiyat at fixed rates, as according to the plaintiff his tenancy under the plaintiff began in 1268 and according to the defendant's own case it commenced in 1213. It would, therefore, appear that he was an occupancy raiyat.

4. He or his successor could, therefore, only transfer their rights in the land if it were proved that there was a custom or usage of making such transfers. No such custom or usage is proved and, therefore, the defendant by his purchase, unless it were made with the consent of the landlords, apparently obtained no title.

5. If the case rested here, we think that the plaintiff would be entitled to a decree. But it appears that the defendant has been in possession of the land in suit since the year 1296; that he has been accepted as a tenant by the plaintiff's co-sharer; and it is alleged that the plaintiff has accepted rent from the defendant for the lands in suit though in the name of the old tenant. It is further contended before us that the lower Court has found that the plaintiff accepted the defendant as a tenant, and that we are bound to accept that finding of fact. To this contention we cannot agree. In the first place, there is no definite finding of fact on this point, and in the second place the question is not, one of fact but of law. We accept the fact found by the lower Court that rents were received from the defendant in the name of the old tenant; but the question of the correct inference to be drawn from that finding is not one of fact but of law.

6. It has also been urged that the receipt of rent on account of another person is a recognition of the tenancy of the actual remitter and the Privy Council case of Naba Kumari Debi v. Kehari Lal Sen 34 C. 902 : 6 C.L.J. 122 : 11 C.W.N. 865 : 4 A.L.J. 570 : 9 Bom. L.R. 846 : 17 M.L.J. 397 : 2 M.L.T. 433 is quoted in support of this view.' But the facts in that case were entirely different as the rent there had been received from the transferee on his own account and with a statement that he was in possession. The receipt of rent from a transferee not on his own account

but as an agent of the transferor is not a recognition of the transfer, as has been held in the case reported in Khoodeeram v. Rookhinee 15 W.R. 197 and Rasamoy Purkait v. Srinath Moyra 7 C.W.N. 182. Moreover these decrees are really based on very sound principles, for a landlord cannot refuse the rent of a holding merely because it is not paid by the tenant personally, and it would be most inequitable to say that the receipt of rent from a third person acting as an agent of the real tenant was tantamount to the recognition of the creation of a new tenancy in the name of the actual payer.

7. It appears to us, however, that for a proper decision of this case it will be necessary to remand the case to the lower Court for a finding whether the defendant has acquired a title to occupy these lands as an occupancy raiyat, by reason of his possession over twelve years and by assertion of a right to possess them as a raiyat, adversely to the plaintiff. It is true that this point has been dealt with by the Munsif, but his decision on it is not complete or satisfactory and in the view taken of the case by the lower appellate Court it was not necessary for the Subordinate Judge to decide the point. In the view of the case taken here the point becomes one of great importance as it cannot, we think, be now denied that a limited interest in land may be acquired by adverse possession. The case is, therefore, remanded to the lower appellate Court for a decision on the following question:

Whether the plaintiff's suit for khas possession is barred by time and whether the defendant has acquired a right to hold the land in suit as an occupancy raiyat by possession as a raiyat for a period of twelve years and by assertion of his title as such. If the decision on this point is in the defendant's favour the suit will be dismissed. If the finding is in the plaintiff's favour the suit will be decreed.

8. We wish to point, out however that it is, in our opinion, extremely desirable that there should be an amicable settlement in this case if possible.

9. In conclusion we wish to refer to two points that have been discussed at considerable length before us. The first is the case propounded by the defendants as the basis of the title of their predecessors in interest. We are content to say that we accept the finding of the lower Court with regard to it and that it cannot be

accepted as a genuine document.

10. In the second place great reliance has been placed on the case reported in W. M. Grant v. Mrs. Robinson 11 C.W.N. 242 as an authority for the proposition that it should be inferred in the present case that the lease granted to Kasi Nath was a permanent transferable one; but the facts in that case wore entirely different. The land was found to have been leased for building purposes specifically and buildings were erected on it. In the present case, the land was let as garden land with special reservations regarding trees and the ordinary provisions of Act VIII of 1885 clearly apply. The fact that the land has been used as bastu land for the last 40 years makes no difference to the case and if the defendant or his predecessors in title chose to build on the land they did so at their own risks.

11. With these remarks we remand the case to the lower appellate Court for a decision on the issue raised. Costs to abide the result.