

APPELLATE CIVIL.

Before Chatterjea and Suhrawardy JJ.

1921

March 4.

PRABODH CHANDRA MITTER

v.

HARISH CHANDRA NASKAR.*

Ijaradar—Contract, written, of tenant with lessor alone—Co-sharer of lessor—Registration of name, effect of—Rent suit—Bengal Tenancy Act (VIII of 1885) s. 50—Land Registration Act (Beng. VII of 1876) ss. 78, 81.

An *ijaradar* is entitled to maintain a suit for the entire rent upon a written contract, which had been executed by the tenant in favour of his lessor alone, and without reference to the latter's co-sharer whose name had previously been registered in respect of an eight anna share.

Surja Kanta Ghattak v. Ananda Mohan Chatterjee (1) followed.

Abdul Aziz v. Kanthu Mallik (2) and *Iswar Chandra Bera v. Kali Charan Santra* (3) distinguished.

SECOND Appeal by Prabodh Chandra Mitter, the plaintiff.

This appeal arose out of a suit commenced by the plaintiff to recover rent due in respect of 400 bighas of land held by defendant No. 1 in mouza Purna Chandrapore, situated in the Sunderbans, of which the plaintiff claimed to be the *ijaradar*. The mouza belonged to one Purna Chandra Das, who had obtained a settlement of about 3,700 bighas of land comprised in the said lot from the Secretary of State for India in Council in 1897. Soon after the settlement Purna transferred a half share of the said property to

*Appeal from Appellate Decree, No. 1624 of 1919, against the decree of J. F. Graham, Additional District Judge of 24-Pergannahs, dated April 14, 1919, affirming the decree of Bhagabutty Churn Kundu, Subordinate Judge of that district, dated Sept. 17, 1917.

(1) (1914) 24 Ind. Cases 866.

(2) (1910) I. L. R. 38 Calc. 512.

(3) (1917) 27 C. L. J. 474.

one Chandra Nath Safui, who made an application under the Land Registration Act, and had his name registered as proprietor with regard to his half-share. In 1903 Purna granted a lease of 400 bighas of land to defendant No. 1, at an annual rent of Rs. 350. Chandra Nath did not join in this lease, and the *kabuliyat* was executed by the defendant No. 1 in favour of Purna alone. Subsequently Purna died and in 1910 his two sons and heirs, Kartic and Akhay, who had also got their names registered, granted an *ijara* of their entire interest in favour of the present plaintiff who now sued the defendant No. 1 for rent due under the *kabuliyat*. The tenant's defence was that only half of the stipulated rent was due to the plaintiff, and the other half to Chandra Nath's son and executor, Sridhar Chandra Safui, who was the registered proprietor with regard to the other half; and the defendant produced rent receipts from the said Sridhar as a valid discharge under section 60 of the Bengal Tenancy Act.

Both the Courts below gave effect to this contention of the defendant, and accordingly decreed the rent suit only in part; they held further that the registered *kabuliyat* executed by the tenant was of no avail as there could not be any estoppel against a rule of law. The plaintiff therefore appealed to the Honourable High Court.

Babu Bijan Kumar Mukerjee (with him *Babu Bipin Behary Ghose*), for the appellant. The Courts below have viewed the question from an altogether wrong angle; section 60 of the Bengal Tenancy Act is not at all applicable to the facts of the present case. The word "proprietor" in section 60 means a sole proprietor, or the entire body of proprietors, and the section applies only when there is competition

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between a registered and an unregistered proprietor, and not where (as in the present case) several persons are registered proprietors with regard to several portions of the same estate. The words "due to any third person" in the last line of that section means obviously a person whose name is not registered as a proprietor with regard to any portion of the estate. That this is the true meaning of section 60 of the Bengal Tenancy Act will be obvious on a comparison of this section with section 78 of the Land Registration Act, which contains two provisions and it is the provision contained in the second clause thereof which covers precisely a case like this. The first clause of section 78 of the Land Registration Act has been incorporated with slight or no change of language in section 60 of the Bengal Tenancy Act, but the Legislature has not thought fit to incorporate therein the provisions of the second clause of section 78. The decision in *Abdul Aziz v. Kanthu Mallik* (1) does not stand in my way, as the question which arises in the present case was expressly left open in that. It is true that the learned Judges who decided that case laid down that section 81 of the Land Registration Act is not incorporated by reference in section 60 of the Bengal Tenancy Act. But as the present case comes not under section 60 of the Bengal Tenancy Act, but under the second clause of section 78 of the Land Registration Act, section 81 thereof will apply and the contract between the defendant No. 1 and the predecessor in interest of the plaintiff must prevail.

Dr. Dwarka Nath Mitter and Babu Harendra Kumar Sarbadhicari, for the respondent. Section 81 of the Land Registration Act is not applicable to the present case as plaintiff is not the person with whom

(1) (1910) I. L. R. 38 Calc. 512.

the tenant entered into a contract, as section 81 contemplates the case of the actual contracting parties. *Vide Iswar Chandra Bera v. Kali Charan Santra* (1). The word "proprietor" includes both a sixteen-anna proprietor and the proprietor of a share of an estate. Compare the definitions of "proprietor" given in the Land Registration Act and in the Bengal Tenancy Act. The Bengal Tenancy Act being a later enactment, the corresponding portion of section 78, clause (2), is omitted therefrom as a surplusage. Consequently, section 60 of the Bengal Tenancy Act is not controlled by section 81 of the Land Registration Act. The tenant (defendant No. 1) is protected by having complied with the requirements of section 60 of the Bengal Tenancy Act. Here there was no contract between the defendant and the plaintiff and the privilege of section 81 cannot be claimed by one who derives his title from the original party to the contract.

Babu Bijan Kumar Mukherjee. The section itself does not warrant such a narrow interpretation. See the earlier decision in *Bhugwan Das v. Raghunath Sahai* (2). Their Lordships might have been justified in refusing to extend the privilege to an usufructuary mortgage, but it would be wrong to lay down a general proposition, that no person claiming a derivative title from the original owner can invoke in his favour the provisions of section 81. The precise question (as in the present case) came up for discussion in *Surja Kanta Ghattak v. Ananda Mohan Chatterjee* (3) in which decision Woodroffe and D. Chatterjee JJ. held that section 81 of the Land Registration Act applies to representatives and assignees as well.

Cur. adv. vult.

(1) (1917) 27 C. L. J. 474.

(2) (1909) 11 C. L. J. 477.

(3) (1914) 24 Ind. Cases 866.

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CHATTERJEA AND SUHRAWARDY JJ. This appeal arises out of a suit for rent under the following circumstances : One Purna was the proprietor of an estate in the Sunderbans. He sold an 8-anna share of the estate to one Chandra Nath on the 9th August 1897. The latter got his name registered in respect of the 8 annas share under the Land Registration Act. About six years afterwards, on 12th May 1903, the defendant No. 1 took a lease of 400 bighas of land from Purna alone and executed a registered *kabuliyat* in his favour agreeing to pay a fixed rent of Rs. 350. He appears to have paid rent for some years to Purna alone. Purna died leaving two sons, and the plaintiff is the *ijaradar* of an 8-anna share of the estate from the sons of Purna whose names were registered in respect of the 8 annas share. The plaintiff brought a suit against the defendant for the rent reserved in the lease. The defendant pleaded that he had paid an 8-anna share of the rent to the representatives of Chandra Nath who was registered as proprietor of an 8-anna share of the estate under the Land Registration Act and that, therefore, the plaintiff was not entitled to rent in respect of the 16 annas share. The Courts below have given effect to this contention and the plaintiff has appealed to this Court.

Now, the name of Purna was registered under the Land Registration Act in respect of 8 annas share ; and, although the name of Chandra Nath was registered in respect of the other 8 annas share, he had nothing to do with the lease which was granted by Purna alone and without reference to his co-sharer Chandra Nath. It appears that the land was not cultivated at the time when it was let out as it was to be held rent-free for the first few years. The position, therefore, was this : one of the co-sharers alone let out a portion of the land of the estate in order to make a

profitable use of it by bringing it under cultivation through his tenant. Whether Chandra Nath had similarly let out other lands or not and what the arrangement was between the co-sharers we do not know. But this much is certain that Chandra Nath had nothing to do with this lease of 400 bighas.

The Court below has relied upon the case of *Abdul Aziz v. Kanthu Mallik* (1) which lays down "there can be no estoppel against an Act of the Legislature." That is a proposition which is not disputed. It further says that "an unregistered part-proprietor of an estate is not entitled to succeed as against the defendants, who, relying upon section 60 of the Bengal Tenancy Act, has established that his debt has been discharged by payment of rent to the registered proprietor." In that case the name of the part-proprietor (the plaintiff) was not registered, and it was pointed out by the learned Judges that there was no contest between two persons both of whom were registered as proprietors under the Act. What the precise position might have been if there had been a contest between two persons both of whom were registered under the Act was not considered in that case.

It is conceded by Dr. Mitter that had the case been brought by Purna himself, the provisions of section 6 of the Bengal Tenancy Act would not have been applicable to the facts of the present case, but it is contended that the plaintiff is not a person with whom the contract was made, the contract having been made with Purna from whom he derived title through his sons. Reliance is placed upon a decision of this Court in the case of *Iswar Chandra Bera v. Kali Charan Santra* (2). In that case at page 476 the learned

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Judges in considering section 81 of the Land Registration Act which lays down "Nothing in section 78 shall be held to interfere with the conditions of any written contract or to prevent any person deeming himself entitled to any sum of money from recovering such sum by due process of law from any other person who has received the same" held that "the written contract mentioned in section 81 refers obviously to a contract between the person who claims rent as proprietor and the person who is bound to pay the rent to him under section 78." The learned Judges further observed: "In the case before us there is no written contract of tenancy between the defendant and the plaintiff. There is no doubt a written contract between the defendant and the proprietor from whom the plaintiff claims to have derived title as usufructuary mortgagee. A case of this description does not, in our opinion, fall within section 81, which is consequently of no avail to the plaintiff." On the other hand, in case of *Surja Kanta Ghattak v. Ananda Mohan Chatterjee* (1) where the lower Court held that section 81 referred to a contract between the proprietor himself and his tenants, that is, the parties themselves, and not to a contract entered into either between the predecessors of the parties or between a successor of one of the parties and another original party, Woodroffe, and D. Chatterjee JJ., observed as follows:—"In the present case there was a registered *kabuliyat* executed by Ananda Mohan Chatterjee in favour of Amrita Lal Bandopadhyaya. The property was sold to the father of the plaintiff and it then descended to the plaintiff. The defendant is a tenant. By the terms of that *kabuliyat*, the contract is one which is entered into not

(1) (1914) 24 Ind. Cases 866.

merely between the executant and the recipient of the *kabuliyat* but between them and their respective heirs and successors. It must, therefore, I think, be taken in this case, that there is a contract between the plaintiff as successor of Amrita Lal Bandopadhya, and the defendant. There being therefore a contract between the parties the case falls within the provisions of section 81 and registration was not necessary." These observations apply to the contract in the present case, and following that case we hold that the plaintiff was entitled to maintain the suit upon the written contract which was executed by the defendant No. 1 in favour of Purna alone and without reference to the other co-sharer, though the name of the latter was registered in respect of an eight annas share.

The result is that the decrees of the Courts below are set aside and the case is remanded to the Court of first instance for trial of the other questions raised in the case and disposal of the case according to law. Costs will abide the result.

Appeal allowed; case remanded.

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