PRIVY COUNCIL.

SURAPATI ROY AND OTHERS (DEFENDANTS)

v.

RAM NARAYAN MUKERJI (PLAINTIFF) AND OTHERS (DEFENDANTS).

P. C.*
1923
April 19.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Patni Lease—Darpatnidar—Transfer of darpatni—Registered deed confirming invalid transfer—Res judicata—Appeal to Privy Council—Value of subject matter—Code of Civil Procedure (Act V of 1908), s. 110—Bengal Tenancy Act (VIII of 1885), s. 12.

Shareholders in a *darpatni* tenure executed in 1906 a deed under which their share purported to be transferred to the other shareholders, but in a suit for rent the deed was held not to be a *bona fide* transfer. In 1914 they executed another deed confirming the transaction of 1906 and releasing their share to the other shareholders. The *patnidar* having again sued all the original *darpatnidars* for rent :—

Held, that there was no *res judicata* which rendered the deed of 1914 invalid, and that under it the transferring *darpatnidars* ceased to be liable for rent from the date when it was registered in accordance with s. 12 of the Bengal Tenancy Act, 1885.

Kristo Bulluv Ghose v. *Kristo Lal Singh* (1) and *Hemendra Nath Mukerji* v. *Kumar Nath Roy* (2) approved.

Held, further, that though the rent claimed in the suits was less than Rs. 10,000, yet the liability being of a recurring nature, and the property above that value, the High Court had rightly certified that the value of the subject matter was over Rs. 10,000, as required by the Code of Civil Procedure, 1908, s. 110, and admitted the appeal accordingly.

CONSOLIDATED APPEAL (No. 80 of 1921) from a judgment and decree of the High Court (August 26, 1919) modifying decrees of the Subordinate Judge of Hooghly, which affirmed decrees of the Munsif.

The first respondent brought the two suits out of which the present consolidated appeal arose against

* *Present*: LORD DUNEDIN, SIR JOHN EDGE AND MR. AMEER ALI.

(1) (1889) I. L. R. 16 Calc. 642. (2) (1908) 12 C. W. N. 478.

the appellants and the remaining respondents (representing defendants 3, 14, 15) to recover rent which he alleged was due from all the defendants as *darpatnidars* in a *taluq* of which he was the *patnidar*. In the first suit, brought in November, 1914, he claimed Rs. 1,136; in the second, brought in February, 1915, he claimed a further Rs. 1,321 as since accrued. The annual rent of the *darpatni* tenure was Rs. 4,325.

The defendants other than Nos. 3, 14 and 15 by their written statement relied on a registered deed dated July 6, 1914, which they had executed in favour of the other defendants. By that deed they recited that by a registered *kobala* executed by them in 1313 (B.S.), *i.e.*, 1906 A.D., they had sold their 12 annas share in the *darpatni* for Rs. 3,000 to the other defendants, who had since enjoyed the whole property, but that the *patnidar* having since brought suits for rent joining them as defendants, the Courts had "erroneously" held that the validity of the *kobala* was not proved. The deed then stated that they "executed "this deed of confirmation of the former *kobala* and "*ladavi ekrar*, being divested of the rights and in-"terests in our 12 annas of the *darpatni* in mauzas . . . "mentioned in the schedule . . . and you being "vested with the same; and we hereby agree that "we received under the *kobala*, dated the 9th "Bhadra 1313, the sum of Rs. 2,250 as the value of our "12 annas share of the properties sold. You have "from that time come into ownership and continue to "do so, for the said consideration, we have been "divested of all rights and interests. We have and "shall have no manner of right or claim thereto. The "construction of the said judgment in the aforesaid "(case) being ambiguous and some Courts having "doubted the true interpretations we, for the con-"sideration taken before, do execute this deed of

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"confirmation of the previous transfer and agree and "covenant that we have and shall have no manner of "claim or right or interest in the properties mention-"ed in the schedule. You are vested with all the "rights we had we being fully divested of the same "and the same will remain confirmed and permanent."

It appeared that in 1908 the *patnidar* had sued all the original *darpatnidars* for rent; the present defendants 3, 14, and 15 did not appear, but the other defendants (now represented by the appellants) contended that by reason of the *kobala* of 1313 B.S. (1906) those defendants only were liable. The Subordinate Judge who tried the suit found that there was no evidence to show that the alleged consideration had been paid; he made a decree against all the defendants. In 1911 the plaintiff sued the same defendants for rent then accrued, and the same defence was raised. The Munsif decided against the present appellants on the ground of *res judicata* and on the facts; that decision was affirmed on appeal to the District Court, and by the High Court, after a remand.

The present suits were tried by the Munsif of Hooghly; he held that the defence based upon the deed of confirmation was not barred as *res judicata*, and found that defendants 3, 14 and 15 had been in exclusive possession; he accordingly made decrees as to the rent due up to July 6, 1914, against all the defendants, and as to rent subsequently due against defendants 3, 14 and 15. Those decrees were affirmed by the Subordinate Judge, who held that the deed of July 6, 1914, was an effectual transfer of the *darpatni* rights of the executants, but upon appeal to the High Court the decrees were reversed. The learned Judges held that the issues relating to the deed of sale dated August 25, 1906, were *res judicata* by reason of the

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previous decisions, and that the assertions in the deed of confirmation dated July 6, 1914, cannot "make it "valid as against the other party to the previous suits." The Court also held that the deed of release did not operate as a transfer of rights *in presenti*.

The present appellants applied to the High Court for leave to appeal to the Privy Council and subsequently for consolidation of the appeals in the two suits. By their petition in the first application they alleged that the arrears of rent claimed in other suits, decreed or pending, exceeded Rs. 10,000, and further that the suits related to "an annual recurring liability "of Rs. 4,500 which being calculated at 10 years' "purchase exceeded Rs. 10, 000."

On May 31, 1920, the High Court consolidated the two appeals and ordered that "Certificates be granted "that as regards amount or value and nature the cases "fulfil the requirement of s. 110 of the Code of Civil "Procedure." No actual certificate appeared in the record.

1923. March 16. *Wallach*, for the first respondent, contended that there was no proper certificate to satisfy the Code of Civil Procedure, 1908; he referred to *Radhakrishna Ayyar* v. *Swaminath Ayyar* (1).

Dube, for the appellants, contended that it was rightly certified that the subject matter of the appeal was over Rs. 10,000 in amount or value, having regard to the annual liability and to the capitalized value of the tenure; he referred to *Radhakrishna Ayyar* v. *Sundaraswamier* (2).

Their Lordships directed that the appeal should proceed, judgment upon the preliminary point being reserved.

(1) (1920) I. L. R. 44 Mad. 293; L. R. 48 I. A. 31.

(2) (1922) I. L. R. 45 Mad. 475; L. R. 49 I. A. 212.

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Dube, for the appellants. Under the Bengal Tenancy Act, 1885 (as to which see also Ben. Act I of 1903), it was open to the appellants to free themselves from their liability as *darpatnidars* by a registered transfer of their interest. The deed of July 6 1914, was effectual for that purpose as from the date of its registration, and no question of *res judicata* arises: *Chintamoni Dutt* v. *Rash Behari Mondul* (1), *Kristo Bullov Ghose* v. *Kristo Lal Singh* (2), *Hemendra Nath Mukerji* v. *Kumar Nath Roy* (3). The deed here was similar to that in the case last cited.

Wallach, for the first respondent. There was no valid transfer by the deed of 1914 so as to satisfy s. 12. The previous decrees preclude the appellants from contending that there was a valid transfer in 1906. Neither the deed of 1914 nor the evidence show that any consideration was given; there was merely an affirmance that the transfer of 1906, which had been held invalid, was valid. The deed of 1914 is at best an instrument of release, it cannot be construed as a deed of transfer; in that respect *Hemandra's Case* (3) is distinguishable: *Mathura Mohon Saha* v. *Ram Kumar Saha* (4). The deed of 1914 was not stamped as a conveyance.

Dube replied.

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The judgment of their Lordships was delivered by

MR. AMEER ALI. These consolidated appeals arise out of two suits brought by the plaintiff, a *patnidar* under the Burdwan estate, to recover rent from the defendants in respect of three *darpatni taluks* they held under him. The Burdwan Raj contains a large number of *patni* tenures, and sub-infeudation is recognized and largely given effect to in that estate. Not

(1) (1891) I. L. R. 19 Calc. 17.
(2) (1889) I. L. R. 16 Calc. 642.
(3) (1908) 12 C. W. N. 478.
(4) (1915) I. L. R. 43 Calc. 790, 807.

only are *patnidars* entitled to grant sub-tenures called *darpatnis*, but the *darpatnidar* on his side can grant subordinate tenures under himself which bear the designation of *sepatni*. The plaintiff's case is that the fifteen defendants whom he sued for the *darpatni* rent of the three *darpatni* taluks were all jointly interested in the under-tenures. The defendants, other than defendants 3, 14 and 15, contended that although originally they held a share in the *darpatni* tenure, they had, on August 25, 1906, conveyed their 12 annas interest to one Ramtarak Bhuttacharji as the *benamidar* of the defendants 3, 14 and 15, and that two years later—namely, in June, 1908, Ramtarak had, by a registered document, renounced all interest in the *darpatni* in favour of the defendants 3, 14 and 15, acknowledging that they were the real purchasers and that he was only their furzidar. The defendants, other than 3, 14 and 15, accordingly urged that they were not liable for the rent of the under-tenure and were wrongly sued.

It appears that after the execution of the deed of sale in 1906, the plaintiff had instituted against these several defendants, including defendants 3, 14 and 15, suits for rent in which the defendants other than defendants 3, 14 and 15, denied their liability on the ground that they had parted with their interest in favour of their co-defendants 3, 14 and 15, and that in those suits the Court before whom the question came for trial had held that the contending defendants had failed to establish that the transaction was *bona fide* and not a mere sham; and had declared that, notwithstanding the transaction of 1906, the plaintiff was entitled to rent from all the defendants, and had decreed his claim accordingly. There were further suits between the parties; the same contentions were raised by the defendants other than defendants 3, 14 and 15;

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but the defence was disallowed on the ground that the question relating to their liability was *res judicata*. The defendants other than the defendants 3, 14 and 15, thereupon, on July 6, 1914, executed a fresh document in favour of their co-defendants 3, 14 and 15, by which they purported to confirm the transaction of 1906 and release in the latter's favour whatever right and title they possessed in their 12 annas share of the *dar-patni*.

The present suits are brought for rents partly due for a period prior to July, 1914, and partly for a period thereafter. The Munsif, before whom the cases came for trial, held that the rent for the period anterior to the execution of the last document—namely, the release of 1914, came within the terms of the previous decisions and that, consequently, the matter was *res judicata*; but with regard to the period after execution of the document of July 6, 1914, he held that the transfer by the contending defendants to their co-defendants 3, 14 and 15 was valid, and that, therefore, they were entitled to be absolved from liability for all subsequent rent. He accordingly decreed the plaintiff's claim for the rent of this latter period against defendants 3, 14 and 15 alone.

From this part of the Munsif's decree, the plaintiff appealed to the Subordinate Judge of Hooghly, who, on February 28, 1917, dismissed the appeal and affirmed the decree of the Munsif.

He held that the point in controversy was concluded by the decision in the case of *Hemendra Nath Mukerji* v. *Kumar Nath Roy* (1), that the deed which the contending defendants had executed ratifying the previous transaction of sale was not only a "disclaimer of any subsisting right or interest of the "executants, but also purported to vest whatever right

(1) (1908) 12 C. W. N. 478.

"or interest they might, by reason of the decisions of "Courts in the previous rent suits, be said to have had "in the properties covered thereby, in the defendants 3, "14 and 15, as from the date of its execution." He held, further, in respect of the contention, that there was no consideration for this last document, that it did not concern the plaintiff, whether a consideration passed or not between the two parties to the transaction, that was a matter between them and them alone; and that the plaintiff himself had ample security in the darpatni tenures. He further held that the defendants 3, 14 and 15 were in possession of the property. He accordingly, as already stated, dismissed the plaintiff's appeal. The plaintiff, not content with this decision, appealed to the High Court of Calcutta, which reversed the judgment of Subordinate Judge and decreed the plaintiff's claim as against all the defendants.

From these decrees of the High Court in the two suits the contending defendants have appealed to this Board. A preliminary objection has been taken as to the competency of the appeal, on the ground, firstly, that the subject matter is below the appealable value; and, secondly, that the certificate granted by the High Court is not sufficient. On both points in their Lordships' opinion the objection fails. The subject matter in dispute relates to a recurring liability and is in respect of a property considerably above the appealable value. The certificate in the circumstances is quite in order.

The reasons upon which the learned Judges of the High Court have based their judgment are somewhat involved, but closely examined they amount to this: that as it had been held in the previous suits that there was no consideration and as there could be no transfer without the proof of consideration, the

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transaction of July, 1914, is affected by the previous decisions, and the plaintiff was entitled to go on suing the defendants as he had done heretofore. There are certain passages in the judgment which incline their Lordships to think the learned Judges did not clearly apprehend the legal position of the parties in relation to the provisions of s. 12 of the Bengal Tenancy Act. They say in one place:—"It "cannot be disputed that if the title is perfected by "a proper deed, and for consideration, the former "decisions cannot operate as *res judicata*," and then go on to say: "But there is no consideration apart from the consideration of the previous *kobala*; and the question of consideration under the *kobala* is *res judicata*." In the case of *Kristo Bullav Ghose* v. *Kristo Lal Singh* (1), a transfer of a permanent tenure by a registered document was held to be complete under s. 12 of the Bengal Tenancy Act, as soon as the document was registered, and the same view was expressed in the case of *Hemendra Nath Mukerji* v. *Kumar Nath Roy* (2), already referred to. Their Lordships consider that the present controversy is covered by the latter decision.

Their Lordships are of opinion that the judgment and decrees of the High Court should be set aside and the order of the Subordinate Judge restored. The appellants will be entitled to their costs here and in the High Court.

And their Lordships will humbly recommend His Majesty accordingly.

Solicitors for appellants: *Chapman-Walker & Shephard.*

Solicitors for first respondent: *T. L. Wilson & Co.*

(1) (1889) I. L. R. 16 Calc. 642. (2) (1908) 12 C. W. N. 478.

A. M. T.