APPELLATE CIVIL.

Before Patterson J.

PRATAPCHANDRA GHOSH

v.

RAMANIMOHAN GHOSH.*

1932

June 6, 7, 10.

Occupancy holding—Gift of a part, without consent of landlord—Ejectment suit by landlord—Bengal Tenancy Act (VIII of 1885), s. 87.

The case of *Dayamayi* v. *Ananda Mohan Roy Chowdhury* (1) lays down the principle that where the transfer is a sale of the whole of a non-transferable occupancy holding, the landlord, in the absence of his consent, is ordinarily entitled to re-enter on the holding. This principle does not necessarily apply to other kinds of transfers, such as transfers by gifts.

Even if it be assumed that the gift of the whole of a non-transferable occupancy holding ordinarily raises an inference of abandonment, the donee may show special circumstances (*e.g.*, no cessation of cultivation, no repudiation on the part of the original tenant of his liability to pay rent to the landlord, the tenant donor continuing to live in the house attached to the holding, *etc.*) to negative such an inference.

Dayamayi v. *Ananda Mohan Boy Chowdhury* (1) distinguished.

SECOND APPEAL by the plaintiff.

The material facts appear from the judgment.

Radhabinode Pal (with him *Jyotireendranath Das*) for the appellant. The court of appeal below erred in appreciating the principle laid down in the case of *Dayamayi* v. *Ananda Mohan Roy Chowdhury* (1). The Full Bench made a distinction between the transfer of an entire holding and a partial transfer.

Jateendranath Sanyal for the respondents. The case of *Dayamayi* v. *Ananda Mohan Roy Chowdhury* (1) applied only to transfers for valuable consideration

*Appeal from Appellate Decree, No. 365 of 1930, against the decree of Trailokyanath Ray, Subordinate Judge of Bogra, dated Sep. 25, 1929, reversing the decree of Velayet Hossain, Addl. Munsif of Bogra, dated July 23, 1928.

(1) (1914) I. L. R. 42 Calc. 172.

1932

Pratapchandra Ghosh v. *Ramanimohan Ghosh.*

and not to transfer by way of gift. If after transfer the tenant remained on a part of the holding the landlord could not re-enter.

Pal, in reply.

Cur. adv. vult.

PATTERSON J. This appeal arises out of a suit for the ejectment of the defendants from a certain non-transferable occupancy holding, on the allegation that they are in possession thereof as trespassers.

The original tenant was one Kamalkamini Debi. Defendant No. 2 is the daughter of Kamalkamini and defendant No. 1 is the husband of defendant No. 2. Defendant No. 3 is a *bargâdâr* in actual cultivating possession of the land in suit. In 1322 B.S., Kamalkamini executed a deed of gift in respect of certain properties, including the holding in suit, in favour of her daughter and her son-in-law, defendants Nos. 1 and 2. This was at or about the time of the marriage of defendant No. 1 to defendant No. 2, and since that time defendant No. 1, together with his wife, defendant No. 2, has been living with his mother-in-law Kamalkamini as *gharjâmâi*, and has been in possession of the land in suit by virtue of the deed of gift executed in his favour by Kamalkamini, and by realisation of his share of the paddy grown on the land by the *bargâdâr*, defendant No. 3. It may be observed that this *bargâdâr*, defendant No. 3, used also to cultivate the land under Kamalkamini before she executed the deed of gift in favour of defendants Nos. 1 and 2. It may further be observed that, although Kamalkamini has admittedly not paid any rent to the landlord for some years back, previous to that and subsequent to the execution of the deed of gift, the rent for the years 1325 to 1327 and the first quarter of 1328 were realised from her by suit.

It is common ground that the transfer was effected without notice to the landlord and without his previous or subsequent consent, and in these

circumstances the question arises whether there has been an abandonment of the holding by Kamalkamini, and whether the landlord is entitled to treat the defendants as trespassers and to eject them from the land. On behalf of the appellant, reliance is placed on that portion of the decision of the Full Bench in *Dayamayi* v. *Ananda Mohan Roy Chowdhury* (1), in which it is laid down that "where "the transfer is a sale of the whole holding, the "landlord, in the absence of his consent, is ordinarily "entitled to enter on the holding". It is contended that although the decision of *Dayamayi's* case (1) relates expressly to *transfers for value* of occupancy holdings, the principles laid down apply with equal force to other kinds of transfers, such as transfer by gift, in which the whole holding is transferred and in which the tenant does not retain any subsisting interest in the holding. This contention cannot, in my opinion, be supported. The decision in *Dayamayi's* case (1) was based on a consideration of a number of previous and to some extent conflicting decisions regarding the effect of transfers for value of occupancy holdings, or of portions of such holdings, and also on a consideration of changes that were taking place in economic conditions in so far as such changes influenced and were influenced by the extension of the practice of the sale or mortgage of occupancy holdings with or without the landlord's consent. This being so, it does not at all follow that the principles laid down in *Dayamayi's* case (1) with regard to transfers for value of occupancy holdings ought to be regarded as being applicable to transfers of such holdings otherwise than by sale or mortgage, *e.g.*, by gift. Transfers by gift, unlike transfers by sale or mortgage, are few and far between, and suits for ejectment arising out of such transfers are probably rare. Moreover, transfers by gift generally take place between persons who are related to one another, and their frequency or infrequency is probably in no way affected by

(1) (1914) I. L. R. 42 Calc. 172.

1932

Pratapchandra Ghosh v. *Ramanimohan Ghosh.*

Patterson J.

changes in economic conditions, as in the case of transfers by sale or mortgage. This being so, I am of opinion that, although transfers by gift may, in certain circumstances, amount to or result in abandonment, no inference of abandonment can be drawn from such transfers on the authority of the decision in the *Dayamayi's* case (1), which relates exclusively to transfers for value.

Assuming, however, for the sake of argument, that the principles laid down in *Dayamayi's* case (1) apply with equal force to transfers by gift, the appellant is confronted with a further difficulty in the use of the word "ordinarily" in the passage in the decision in *Dayamayi's* case (1) quoted above. The use of the word "ordinarily" in this connection appears to me to point to the conclusion that although an inference of abandonment *may* be drawn from the fact of the entire holding having been transferred, the door is left open to the tenant or his transferee to show that special circumstances exist which would negative such an inference. It seems to me that such special circumstances have been proved to exist in the present case. Although the transfer of the holding has to some extent affected the legal rights of Kamalkamini and of the defendants, as amongst themselves, the legal rights of the landlord have not been materially affected. There has been no cessation of cultivation and no repudiation on the part of Kamalkamini of her liability to pay rent to the plaintiff. Kamalkamini has continued to live in the same house, and the *bargâdâr* has continued to deliver the tenant's share of the paddy grown on the land to the inmates of that house for the enjoyment of Kamalkamini and the other members of her household. The only real difference that the transfer of the holding to the defendants Nos. 1 and 2 has made is that the title in the holding, as against Kamalkamini, is now vested in them, and they now live in Kamalkamini's house and

(1) (1914) I. L. R. 42 Calc. 172.

share in the enjoyment of the crops grown on the land. It has been repeatedly held that, even if the entire holding is transferred, neither the original tenant nor his transferee is liable to ejectment provided the tenant continues to occupy some portion of the land by virtue of some sort of agreement between him and his transferee, but as far as I am aware it has never been held that, in order that the position of a tenant and his transferee may be safeguarded as against the landlord, it is necessary that the agreement between them should be of a legally binding nature. It seems to me that, in certain circumstances, an informal agreement between them would have the same effect, even though it might not be legally binding. This seems to be the position in the present case, Kamalkamini having made some sort of arrangement with her son-in-law to the effect that he and his wife should come and live in her house, and that they should all share in the enjoyment of the crops grown on the land.

It may be said that even if the above view of the matter is correct, it applies only as between the landlord and the original tenant, but that the transferees, having acquired no title as against the landlord, are in the position of trespassers and are liable to be ejected from the land. This contention has been raised more than once in similar cases that have come before this Court and has, in recent years, invariably been negatived. Before the question of ejecting the transferee can at all arise, the landlord must show that he has a right of re-entry as against the original tenant. This right he may seek to establish either by showing that the conditions laid down in section 87 of the Bengal Tenancy Act have been fulfilled, or that the case comes within the purview of the rules laid down in *Dayamayi's* case (1). Even if, under the rules laid down in *Dayamayi's* case (1), an inference of abandonment may be held to have arisen

(1) (1914) I. L. R. 42 Calc. 172.

1932

Pratapchandra Ghosh v. *Ramanimohan Ghosh.*

Patterson J.

from the fact that the entire holding has been transferred, it is still open to the tenant or to his transferee to show that circumstances exist which negative that inference. As already stated, I am of opinion that the rule laid down in *Dayamayi's* case (1) does not apply to the present case, and I am further of opinion that, even if it does, the inference of abandonment that may arise on the application of that rule will, in the particular circumstances of this case, have to be negatived.

I am, therefore, of opinion that the plaintiff has failed to prove that he has a right of re-entry as against the original tenant, from which it follows that he has no right to eject the original tenant's transferees and to take *khâs* possession of the land in suit.

The result is that the appeal is dismissed with costs and the judgment and decree of the lower appellate court are affirmed.

Appeal dismissed.

A. K. D.

(1) (1914) I. L. R. 42 Calc. 172.