LETTERS PATENT APPEAL.

Before Rankin C. J. and C. C. Ghose J.

BIJAYKRISHNA BASU

v.

BINODEBIHARI PRAMANIK.*

1932

Jan. 27, 28.

Landlord and Tenant—Decree for eviction against occupancy râiyat—*Purchaser of portion of tenant's right, if may maintain suit challenging the decree of the landlord.*

Where the landlords have fraudulently obtained an order for eviction against tenants, who have non-transferable occupancy right, and have obtained symbolical possession of the land, the purchaser of a portion of the rights of the recorded tenants is entitled to challenge the character of the landlord's decree by a suit.

Brahmadeo Narain Singh v. *Ramdown Singh* (1) and *Dayamayi* v. *Ananda Mohan Roy Chowdhury* (2) relied on.

Gananath Satpathy v. *Harihar Pandhi* (3) explained and distinguished.

LETTERS PATENT APPEALS by the defendants.

Four brothers, Gopal, Dinanath, Ramchandra and Ramanath, held the land in suit under Bijaykrishna, Shashibhushan and Rajanikanta Basu.

The plaintiff in the first suit purchased the one-fourth share of Ramanath and the other plaintiff Binodebihari Pramanik purchased the shares of Dinanath and Gopal.

The landlords ignored the transfers to the plaintiffs and in 1920 filed suits for rent due from 1323 to 1326B.S. The plaintiffs paid the entire decretal amount, but took no *khârij.* Subsequently, two of three landlords filed suits against the recorded tenants and obtained a decree and order for eviction. They, then, proceeded to take symbolical possession.

*Letters Patent Appeals, Nos. 24 and 25 of 1931, in Appeals from Appellate Decrees, Nos. 2337 and 2338 of 1929.

(1) (1908) 16 C. L. J. 139. (2) (1914) I. L. R. 42 Calc. 172.
(3) (1918) 48 Ind. Cas. 359.

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Thereupon, the present plaintiffs filed suits for declaration that the landlord's decree was fraudulent and inoperative against the plaintiffs. Other facts of the case are fully set out in the judgment.

Heeralal Chakrabarti and *Shyamadas Bhattacharya* for the appellants.

Bijankumar Mukherji, Jaygopal Ghosh and *Harideb Chatterji* for the respondents.

RANKIN C. J. These are two Letter Patent Appeals, brought by leave, from a decision of my learned brother Mr. Justice Pearson in two Second Appeals. The same question arises in each case. There was a *jamâ* of 5 *bighâs* 2 *cottâs* at a rental of Rs. 10, held under defendants Nos. 1 and 2, in the names of four brothers. It has been alleged in the present suits that this holding was *mourâsi mokarrâri;* but it has been established and has now been admitted that the holding was an ordinary non-transferable occupancy holding. The plaintiff in one suit bought the interest of two brothers, namely, eight annas interest in the holding at a court-sale, held to enforce a mortgage, and in the other suit the plaintiff bought the interest of the third brother, that is to say, four annas, at a court-sale in execution of a money decree; and the plaintiffs, by their suits, having alleged this, make the following complaint. They say that, while the holding is non-transferable, nevertheless the original *râiyats* had not abandoned the holding and had not transferred the whole of it and, in these circumstances, the defendants Nos. 1 and 2—the superior landlords of the holding—were not in a position to recover the land from the plaintiffs who had obtained possession. There is no doubt that the plaintiff in each suit was in possession and it is quite clear that there was no abandonment by the original *râiyats.* That being so, it has to be conceded that the defendants Nos. 1 and 2 were not in a position to get rid of the plaintiff in either suit. The plaintiffs' cause of action alleged is this that in that state of affairs, when the landlords had on a previous occasion brought

a rent suit against the recorded tenants, the plaintiffs paid the rent so as to leave the landlords without any decree, but then another suit was brought by the landlord against the recorded tenants alleging that those recorded tenants were mere tenants-at-will—*thikâ*-tenants, although the landlords and the recorded tenants well knew that the tenants were entitled to an occupancy right. Now, the suit was brought and a decree was recovered including a direction for eviction of these occupancy *râiyats* from their land. The plaintiffs say that this was a mere fraudulent device to enable the landlords to evict the plaintiffs which, in law and honesty, they were entirely unable to do. Consequently, they bring their suits to have it declared that that decree is fraudulent and has no operation against the plaintiffs. The question discussed was whether the plaintiffs had any right to obtain relief in these circumstances. The Munsif held that the landlords' suit was not only fraudulent on the part of the landlords, but collusive on the part of the recorded tenants. The facts speak for themselves and the only observation to be made is that the tenants did nothing to defend the suit and allowed a decree in a somewhat outrageous form to be passed against them. The lower appellate court also found that the suit was fraudulent on the part of the landlords, but did not in terms state whether it was collusive on the part of the recorded tenants. As we are now in a position to deal with questions of fact, even if they are not found by the lower appellate court, I may say on this point that I see no reason whatever to doubt the correctness of the Munsif's findings, nor do I think that the lower appellate court meant to throw any doubt upon the view taken by the Munsif. In these circumstances, as the holding is non-transferable, it is said that the plaintiffs obtained no title *vis-a-vis* the landlords. Under *Dayamayi's* case (1), they had a good title against every one else; but they had no title against the landlords. The question, therefore, is—can they obtain a declaration against the landlords to the effect

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

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that this decree is fraudulent and of no effect? The learned judge found that there was a precedent for the decree which had been made by the courts below. In the case of *Brahmadeo Narain Singh* v. *Ramdown Singh* (1), where Mr. Justice Mitra and Mr. Justice Bell upheld an order of the same character as is here, the reasoning of the Court was that, although the transferee from the tenant in a case such as the present had not got a title valid against the landlord, he was in a position of having a title against other persons and the landlord was not in a position to eject him. Though the landlord did not recognise him, he had a subsisting right to possession of the land and the landlord was not entitled to take steps to interfere with that possession.

Before us, Mr. Heeralal Chakrabarti, who has gone into the matter very carefully, has pointed out that under *Dayamayi's* case (2), the second of the appeals there referred to the Full Bench, namely, Second Appeal No. 2388 of 1908, raised the question whether, if the superior landlord in such circumstances took forcible possession so as to oust the purchaser from the tenant, the purchaser could bring a suit, apart from section 9 of the Specific Relief Act, to recover possession and the Full Bench held that the purchaser of a part of the recorded tenant's interest could bring such a suit, that is to say, he was not only a person who was in possession and whom the landlord had no right to eject but notwithstanding that he had no title against the landlord, he could recover back the land if the landlord forcibly ejected him. In these circumstances, we have to consider whether there is any real objection to the view taken by the learned Judge. It seems to me that there is not. In my view, the position in this case is in no way different whether it be held that the landlord's rent suit was fraudulent or whether it be held that both the landlords and the recorded tenants fraudulently got that decree passed. A case has been cited to us from the Patna High Court,

(1) (1908) 16 C. L. J. 139. (2) (1914) I. L. R. 42 Calc. 172.

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namely, the case of *Gananath Satpathy* v. *Harihar Pandhi* (1), which was noticed by the learned trial court here when this question was discussed. Upon a consideration of *Dayamayi's* case (2), the Patna Division Bench said "It does not seem to us that there "is any justification for the contention that because a "landlord cannot eject the transferee and because if he "does eject him he is liable to restore possession, the "transferee has a right to obtain a declaration "prohibiting the landlord from proceeding with an "action against his recorded tenant. The transferees "here cannot be permitted to attack on the ground of "want of consideration or fraud the conveyance made "by Kusum Behera in favour of Jasoda Dei. If the "holding should be sold, they may possibly be "competent to attack the sale but at this stage they "have no right of suit." It will be observed that in that case the plaintiff was claiming that, after the tenant had transferred to him, he had gone and transferred to somebody else and he was claiming to interfere with a suit brought by the superior landlord treating somebody else as the true and proper tenant. What was held was that if the holding should be sold, the plaintiff might be competent to attack the sale. What is the present position? The position here is that the landlords have fraudulently obtained an order of eviction and have subsequently obtained symbolical possession. So, they have done what they can to interfere with the possession of the land. I am wholly unable to say that the decision in the Patna case is a decision which applies to the facts before us. In my judgment, the whole point of this fraudulent decree is that it is directed against the plaintiffs in these suits. It is preparing the ground for an entirely dishonest claim to be entertained as against the plaintiffs for possession. It seems to me, in these circumstances, that the plaintiffs must be entitled to challenge the character of that decree by a suit if they do not prefer to take their chance by waiting.

(1) (1918) 48 Ind. Cas. 359, 361. (2) (1914) I. L. R. 42 Calc. 172.

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In my judgment, the view taken by the learned Judge must be supported and the two Letters Patent Appeals must be dismissed with costs.

GHOSE J. I agree.

Appeals dismissed.

S. M.