APPELLATE CIVIL.

Before Mukherjea J.

RADHA RANI DEBI

v.

BEJOY CHAND MAHTAB.*

1938
May 5, 6.

Patni *tenure—Transfer by* patnidâr—*Suit by* zemindâr *for rent for a period prior to the transfer—Transferee recognised by the* zemindâr *subsequent to the suit but before decree— Decree against the transferor only—Execution of such decree by sale of the tenure.*

D., a *patnidâr* under a *zemindâr*, transferred his *patni* tenure to R. in 1925. R.'s name, however, was not registered in the *zemindâr's sheristâ* in conformity with ss. 5 and 6 of the Bengal Regulation VIII of 1819, and D. remained the recorded *patnidâr* of the *zemindâr* even after the transfer of the tenure. In 1936, the *zemindâr* brought a suit against D. for rent of the said tenure for the period 1932 to 1936. D. took the plea that he was not liable, as he had, prior to the period for which rent was claimed, transferred the *patni* to R. Thereupon, the plaintiff added R. as a defendant, but in his petition for addition of this defendant stated expressly that he did not recognise her as his *patnidâr*. The lower appellate Court decreed the suit against D., but dismissed it as against R., and in course of its judgment observed that R. might be considered to have been recognised by the *zemindâr* as a tenant as from the date when she was made a party to the rent suit.

In proceedings in execution of the decree of the appellate Court,

held that if, in fact, R. became a tenant on the date she was added as a defendant in the suit, then, on the date of the decree there was no relationship of *zemindâr* and *patnidâr* between the plaintiff and D., and the decree against D. would be a mere money decree which could not be executed as a rent-decree by sale of the *patni* under the provisions of ch. XIV of the Bengal Tenancy Act, 1885.

Held, further, that the charge in favour of the *zemindâr* on the *patni* tenure for arrears of rent could not be enforced, unless a decree was obtained against R. also.

Forbes v. *Maharaj Bahadur Singh* (1) relied upon.

Held, also, that the plaintiff's petition for adding R. as a defendant could not, in the circumstances of the case, be construed as an act of his recognition of R. as his *patnidâr*.

In view, however, of other evidence on record, the case was remanded to the lower appellate Court for determining whether R. was recognised as a *patnidâr* by the *zemindâr* prior to the date of the decree in the rent suit.

*Appeal from Appellate Order, No. 88 of 1937 against the order of B. K. Guha, District Judge of Birbhum, dated Dec. 9, 1937, affirming the order of Allah Hafez, Second Munsif of Rampurhat, dated Aug. 27, 1937.

(1) 1914, I. L. R. 41 Cal. 926 ; L. R. 41 I. A. 91.

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APPEAL FROM APPELLATE ORDER preferred by the defendant Radha Rani Debi in execution proceedings.

The facts of the case appear from the judgment.

Gopendra Nath Das, *Sib Kumar Das* and *Satyendra Nath Banerji* for the appellant. The whole conduct of the *zemindâr* shows that he recognised the transferee. The original *patnidâr* was, therefore, not liable, and there could be no rent-decree. The case comes under the scope of *Forbes*' case (1).

Saratkumar Mitra and *Gopes Chandra Chatterji* for the respondents. It must be remembered that it was a rent-suit and not a proceeding under the *Patni* Regulation. The landlord expressly stated that he did not recognise the transferee. He only added the transferee for abundant precaution. The position of the landlord would become very difficult if in such cases it be held that there was recognition.

Das, in reply, drew the attention of the Court to some demand notices after the filing of the suit, to show recognition.

[*Mitra*. Your Lordship is not entitled to look at these subsequent demands. You can look at them, only if it is absolutely necessary for the proper disposal of the case.]

Cur. adv. vult.

MUKHERJEA J. The appellant before me, one Radha Rani Debi, was one of the defendants in a rent suit commenced by the Maharaja of Burdwan as plaintiff, and the appeal is directed against an order passed in a proceeding in execution of the decree obtained in that rent suit. The facts, so far as they are material for our present purposes, may be shortly stated as follows:—

One Dwarka Prasanna Mukherji, who was defendant No. 1 in the rent suit, was a *patnidâr* under the Maharaja of Burdwan and he sold his interest to defendant No. 2, Radha Rani, some time

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in 1925. Radha Rani did not comply with the provisions of s. 5 of the *Patni* Regulation and she was not recognised as a transferee by the Maharaja. In 1936 the Maharaja started a rent suit against the recorded tenant, Dwarka, claiming rent for the years 1339 to 1342 B.S. (corresponding with April 14, 1932 to April 13, 1936). Dwarka in his written statement set up a plea that he had transferred the *patni* to Radha Rani prior to the period for which rent was claimed, and consequently, he was not answerable for the rent, and the proper person to be sued was Radha Rani. Upon this, the plaintiff made an application to the Court for adding Radha Rani as a party defendant to the suit, although in the petition it was expressly stated that the plaintiff did not recognize her as a tenant but made her a party because of the objection raised by the tenant defendant in his written statement. This application was granted and Radha Rani was added as defendant No. 2 in the rent suit. The first Court dismissed the suit against Dwarka and decreed it in part against Radha Rani alone. The plaintiff preferred an appeal against this decree, and the appellate Court modified the decision of the trial Judge and decreed the plaintiff's rent suit in its entirety against Dwarka and dismissed it against Radha Rani. It is this decree which is now sought to be executed and the plaintiff wants to put the tenure up to sale. Radha Rani, who was made a party to this execution proceeding, took an objection that the decree was a mere personal decree against Dwarka and consequently, in execution of the same, the tenure in her hands could not be sold. The trial Court negatived this contention of Radha Rani and held that the decree was executable as a rent-decree. This order was affirmed by the lower appellate Court and it is against this appellate order that the present Second Appeal has been preferred.

The sole point for determination is whether the decree which the plaintiff obtained against Dwarka in the rent suit could be executed as a rent-decree by

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sale of the tenure under the provisions of ch. XIV of the Bengal Tenancy Act, 1885.

It cannot be disputed that so long as a transferee of a *patni* tenure is not recognized by the landlord and his name is not registered in the landlord's *sheristâ* in conformity with the provisions of ss. 5 and 6 of the *Patni* Regulation the latter may sue the original *patnidâr* and put the tenure up to sale in execution of the decree without any notice to the assignee. If, therefore, Radha Rani is regarded as an unrecognized transferee of the *patni* tenure there is no doubt that the decree against Dwarka could be executed by sale of the tenure. The difficulty, however, is created by the fact that the appellate Court which finally decided the rent suit made an observation in the judgment that Radha Rani might be considered to have been recognized as a tenant by the Maharaja from the date on which she was made a party to the rent suit though that not with retrospective effect. Both the Courts below in the present case have taken the view that this finding contained in the judgment was conclusive between the parties; but in spite of this, they have concurred in holding that the decree had the effect of a rent-decree. The reasons assigned are: that Radha Rani allowed Dwarka to represent the tenure during the period for which rent was claimed and as she was made a party to the suit as well as to the execution-proceedings she was unable to say that the decree was not a rent-decree. This reasoning, in my opinion, is entirely fallacious. If, in fact, Radha Rani became a tenant on and from the date when she was added as a party defendant, then, at the date of the decree, the tenant in respect of the tenure was Radha Rani and not Dwarka. There was no relationship of landlord and tenant between the plaintiff and Dwarka at the date of the decree and consequently according to the principle laid down in *Forbes* v. *Maharaj Bahadur Singh* (1) the charge was not available to the landlord unless he got a decree

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against Radha Rani as well. The position, in my opinion, seems to be this: If Radha Rani is to be deemed to be a purchaser of the *patni* at the date when she was recognized, according to the appellate Court, by the landlord as a tenant, she would take the *patni* subject to the charge of all arrears of rent existing at the time, and though she could not be made personally liable for any amount, the tenure in her hands could certainly be proceeded against to enforce the rent-charge. The previous *patnidâr* would, in that case, be personally liable for the entire rent that accrued due prior to the recognition of the purchaser, and the decree against him would have no other effect than that of a money-decree pure and simple. If, on the other hand, Radha Rani was not recognized as a tenant by the landlord, the only tenant on the records would be Dwarka and a decree against him would bind the tenure. It seems to me that the Courts below should not have taken the opinion of the appellate Court expressed in the rent suit as conclusive on the point as to whether Radha Rani was recognized as a transferee by the landlord on the date when she was made a party. That she was not recognized before that date is undoubtedly a finding which constitutes the foundation of the decree and cannot be disputed in execution-proceedings, and the observation that she might have been recognized after the suit was instituted and at the date when she was joined as a party was, I think, a mere expression of opinion which was not quite relevant to the judgment and did not certainly constitute the basis of it. As I have said already, the petition for adding Radha Rani as a party defendant cannot be construed as an act of recognition on the part of the landlord. Mr. Das, however, has drawn my attention to certain passages in the appellate Court's judgment in the rent suit where a contention seems to have been raised that the decree should have been passed against Radha Rani also. I have been also shown certain demand notices which are on the record and which seem to indicate that the

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zemindâr did demand rent from Radha Rani on the footing that she was the *patnidâr*. The Court below, however, having taken the view that the opinion expressed by the Judge in the rent suit was conclusive on the point has not considered the evidence that bear upon it. I think, therefore, that in the interest of justice this question requires further investigation. The result is that the case will be sent back to the lower appellate Court with the direction to enquire as to whether on the evidence on record Radha Rani was at all recognized as a tenant by the landlord prior to the date of the decision in the rent suit. If she was recognized as a tenant the decree against Dwarka will not be a rent-decree and the tenure cannot be sold in execution of it. If, on the other hand, there was no recognition on the part of the landlord the decree must have the effect of a rent-decree and the entire tenure could be attached and sold in execution-proceeding.

The appeal is thus allowed and the case sent back for rehearing in the light of the observations made above. There will be no order as to costs in this appeal. Final costs will abide the result.

Appeal allowed. Case remanded.

P. K. D.