

Before Mr. Justice Knox, Mr. Justice Banerji and Mr. Justice Aikman.

MURLIDHAR AND OTHERS (DEPENDANTS) v. PEM RAJ AND OTHERS

(PLAINTIFFS).*

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December 20.

Act No. XII of 1881 (N.-W. P. Rent Act), Section 7—Expropriatory tenant—Expropriatory rights arising on sale of part only of vendor's proprietary rights.

Held that in order that the provisions of section 7 of the North-Western Provinces Rent Act, 1881, may come into operation, it is not necessary that the zamindar should lose or part with his proprietary rights in respect of the whole of his interest in the mahal. *Bhawani Prasad v. Ghulam Muhammad* (1) approved.

Held also that if a zamindar sells his zamindari rights and includes in the sale the right to cultivatory possession of the sir land, and agrees to relinquish his expropriatory rights in respect of the sir land the vendee, in the event of such possession not being delivered or expropriatory rights not being relinquished, is not entitled to claim a refund of the sale price or any portion thereof. *Bhikham Singh v. Har Parsad* (2) approved.

THE facts of this case are as follows:—Murlidhar and others, being owners of a ten biswa share in the zamindari of a village called Gumanpur, sold to Pem Raj and others, on the 22nd September 1893, four biswas out of the said share. By the same transaction the vendors also purported to convey to the vendees 58 bighas 13 biswas of sir land. The sir land thus dealt with by the conveyance was a portion of 226 bighas 14 biswas of sir land appertaining to the whole village, and was slightly in excess of what would have been the sir of the vendors proportionate to the four biswa share sold by them. The sale-deed provided that the purchasers should be put into actual possession of the sir land, and that the vendors should relinquish such expropriatory rights as they might acquire therein. It was also stated in the sale-deed that out of Rs. 4,000, the amount of consideration for the sale, Rs. 1,500 should be deemed to be the consideration for the transfer of the sir land and for the agreement to relinquish the expropriatory rights. The sale-deed further provided that in the event of the vendees failing to deliver possession of the sir land to the purchasers, or of their not relinquishing their expropriatory rights, the vendees would be entitled to a refund of

* Second Appeal No. 885 of 1896 from a decree of Rai Pyare Lal, District Judge of Mainpuri, dated the 5th August 1896, confirming a decree of Maulvi Muhammad Mazhar Husain, Subordinate Judge of Mainpuri, dated the 15th June 1895.

(1) (1895) I. L. R., 18 All., 121.

(2) (1896) I. L. R., 19 All., 35.

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the aforesaid sum of Rs. 1,500. Possession not having been delivered over the sir land, the present suit was brought for recovery of possession, and in the alternative for a refund of Rs. 1,500 with interest. The Court of first instance (Subordinate Judge of Mainpuri) made a decree in favour of the plaintiffs for the refund of the amount stated above. On appeal the lower appellate Court (Officiating District Judge of Mainpuri) affirmed the decree of the first Court. The defendants appealed to the High Court.

Pandit *Sundar Lal*, for the appellants.

The object of that part of the contract between the parties which related to the sir land was to compel the defendants not to exercise the right conferred on them by section 7 of Act No. XII of 1881, and thus to defeat the object with which the provisions of that section were enacted. The contract is therefore void under section 23 of Act No. IX of 1872, and is not enforceable at law—Leake on contracts, page 677, *Kashi Prasad v. Kedar Nath Sahu* (1), *Bhikham Singh v. Har Prasad* (2) and the judgment of this Court in an unreported case (Second Appeal No. 890 of 1896, decided on the 5th May 1899).

The losing or parting with the proprietary rights of a person in a mahal so as to create expropriatory rights need not be a loss of or parting with his entire rights in the mahal. If it were not so, a man might sell all his rights in a mahal save and except one square inch of land therein. This would then prevent the acquisition of the rights of an expropriatory tenancy, which section 7 of Act No. XII of 1881 intended to confer, and the retention of which in the hands of the expropriator is so carefully provided for in section 9 of the Act—*Gulub Rai v. Indar Singh* (3). The object of these sections is to make some provision for improvident proprietors who are compelled by circumstances to sell or part with their lands. A proprietor may sell any part of his rights in a mahal or in the sir lands in the mahal—*Sital Prasad v. Amtul Bibi* (4), *Payag Singh v. Nurul Hasan Khan* (5),

(1) (1897) I. L. R., 20 All., 219.

(2) (1896) I. L. R., 19 All., 35.

(3) (1888) I. L. R., 6 All., 54.

(4) (1885) I. L. R., 7 All., 638.

(5) (1889) Weekly Notes, 1890, p. 5.

Ghansham Das v. Sheomangal Singh (1). In such a case ex-proprietary rights accrue to the vendor—*Bhawani Prasad v. Ghulam Muhammad* (2). The Board of Revenue in these Provinces was at first inclined to take this view—*Shaiikh Seraj-ud-din v. Mohsin Ali* (3)—It has, however now expressed a different view—*Khushali v. Bhika* (4). The adoption of this interpretation would altogether defeat the object with which section 7 of Act No. XII of 1881 was enacted, and would be inconsistent with the policy which underlies the enactment of section 174A of this Act or sections 50, 125, and 190 of Act No. XIX of 1873. A construction which defeats the object of the law should not be adopted. In the present case the contract being void, the suit is not maintainable.

Munshi *Kalindi Prasad* (with Munshi *Gokul Prasad*) for the respondents.

The interpretation put upon section 7 of the Rent Act No. XII of 1881, in *Bhawani Prasad v. Ghulam Muhammad* (2), deserves reconsideration. A person must part with all his proprietary rights in a mahal before he can acquire exproprietary rights in the land held by him as sir. I rely upon the wording of the section itself. The word 'his' in the first paragraph of the section is very expressive. In the absence of any limitation the words 'his proprietary rights' ought to be construed in their largest sense—*Jarao Bai v. Kifayat Ali Khan* (5). In that case it was observed that "section 7 of Act No. XII of 1881 must refer to a case where the zamindar loses or parts with *all* his proprietary rights." Further on in the same case it was observed that "the words 'his proprietary rights' as used in section 7 must refer to the losing or parting with all his proprietary rights." Section 7 of the Rent Act is intended to provide a protection against absolute ruin for a zamindar who has lost all that he had and has nothing left to subsist on. But if the view taken in *Bhawani Prasad v. Ghulam Muhammad* (2) be correct, it might happen that a person while retaining the greatest part of his property for himself might part with the

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(1) Weekly Notes, 1891, p. 150.

(2) (1895) L. L. R., 18 All., 121.

(3) (1879) L. L. R., R. and R., 111.

(4) (1888) Sel. Dec., B. of R., p. 8.

(5) Weekly Notes, 1893, p. 177.

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minutest fraction of it with this result, that he would acquire exproprietary rights in the proportionate share of his sir land. Is he indigent enough to entitle him to the grace allowed by law? What would be the value of such grace? I submit that the interpretation put upon section 7 by the Board of Revenue in *Khushali v. Bhika* (1) is correct and based upon sound reasoning.

BANERJI, J.—The appellants, who were defendants in the Court of first instance, held a ten-biswas share in the zamindari of the village Gumanpur. They sold four biswas out of the said 10 biswas to the plaintiffs on the 22nd September 1893. By that sale-deed the defendants purported to convey to the plaintiffs not only a 4-biswas share of the zamindari, but also 58 bighas 13 biswas of sir land. This quantity of sir land is a portion of 226 bighas 14 biswas of sir land appertaining to the whole village, and is slightly in excess of what would be the sir of the defendants proportionately to the 4-biswas share sold by them. The sale-deed provided that the purchasers should be put into actual possession of the sir land, and the vendors should relinquish such exproprietary rights as they might acquire therein. It was also stated in the sale-deed that out of Rs. 4,000, the amount of consideration for the sale, Rs. 1,500 should be deemed to be the consideration for the transfer of the sir land and the agreement to relinquish exproprietary rights. The sale-deed further provided that in the event of the vendors failing to deliver possession of the sir land to the purchasers, or of their not relinquishing their exproprietary rights, the vendees would be entitled to a refund of the aforesaid sum of Rs. 1,500. Possession not having been delivered over the sir land, the present suit was brought for recovery of possession, and, in the alternative, for a refund of Rs. 1,500 with interest. The Court of first instance made a decree in favour of the plaintiffs for the refund of the amount stated above. That decision has been affirmed by the lower appellate Court. The defendants have preferred this appeal on the ground that the agreement upon which the plaintiffs have based their claim is contrary to law and is therefore void. It was held in *Bhikham Singh v. Har Prasad* (2) that if a zamindar sells his zamindari rights and includes in the sale the right to cultivatory

(1) (1888) Sel. Dec., B. of R., p. 8. (2) (1895) I. L. R., 18 All. 121.

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possession of the sir land and agrees to relinquish his expropriatory rights in respect of the sir land, the vendee, in the event of such possession not being delivered or expropriatory rights not being relinquished, is not entitled to claim a refund of the sale price or any portion thereof. To this view I still adhere. The only other question which has to be considered in this case, therefore, is whether, by selling a part of their proprietary rights in the village in question, the defendants could acquire expropriatory rights in respect of their sir land under section 7 of Act No. XII of 1881. The decision of that question depends upon the construction to be placed on the provisions of section 7. Does that section contemplate that expropriatory rights would accrue in favour of a person losing or parting with his proprietary rights only when he loses or parts with all his proprietary rights or that he would acquire such rights even when he parts with or loses a portion of his proprietary rights? This question was answered by a Division Bench of this Court in the case of *Bhawani Prasad v. Ghulam Muhammad* (1). In that case it was held that in order that the provisions of section 7 may come into operation, it is not necessary that the zamindar should lose or part with his proprietary rights in respect of the whole of his interest in the mahal. With that decision I am fully in accord. The language of section 7 is no doubt not so clear as it should have been; but having regard to the policy of that section any construction other than that placed on it in the ruling referred to above would evidently defeat the object of the section and enable a proprietor to divest himself of his sir lands by excluding from sale an infinitesimal portion of his proprietary rights. The reasons for holding that the section does not contemplate the transfer or loss of all proprietary rights are fully stated in that judgment, and I have nothing to add to those reasons. There is, it is true, a ruling of the Board of Revenue, reported in the *Selected Decisions of the Board of Revenue for 1888-1891*, at page 8, in which a contrary view was held, but I am unable to follow the conclusions arrived at in that ruling. According to well-known rules of construction it is our duty to place on the section such a construction as would effectuate the intention of the Legislature,

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provided that the language of the section can admit of the construction. I hold that the language of section 7 is sufficiently wide to justify us in construing it in the manner in which it was construed in *Bhawani Prasad v. Ghulam Muhammad* (1). If the words "proprietary rights" in section 7 may, as I hold they do, include a part of the proprietary rights, the subsequent words "land held by him as sir" can be equally held to include a proportionate part of the sir land. In this view as the agreement upon which the plaintiffs have based their claim would have the effect of defeating the law as I understand it, it is a void agreement and cannot be given effect to. The plaintiffs' suit should therefore have been dismissed. I would allow the appeal, set aside the decrees of the Courts below and dismiss the suit; but having regard to the conduct of the defendants and to the fact that the plea which has been taken in this Court was never raised in the Court below, I would make no order as to the costs of the litigation.

KNOX, J.—I follow my learned brother, but with extreme hesitation. If the question was *res integra* and if the precedent, *Bhawani Prasad v. Ghulam Muhammad* (1), did not stand as a reported decision of this Court, I should have been very much inclined to hold otherwise. The interpretation now placed seems to me to put such a strain upon the words of the section as they stand that I doubt whether they can bear it. We have had abundant evidence that the language of this particular Act is in many cases, to say the least of it, very unartistic, and it may be that the interpretation which we now put is one within the spirit and policy aimed at by the Legislature when they enacted this section.

AIKMAN, J.—The decision of this appeal turns upon the construction of the opening words of section 7 of Act No. XII of 1881. These words are as follows:—"Every person who may hereafter lose or part with his proprietary rights in any mahal shall have a right of occupancy in the land held by him as sir in such mahal at the date of such loss or parting" at a rate of rent such as is specified in the section. The Board of Revenue for these provinces held that the right thus created did not arise until the person claiming it lost or parted with the whole of his proprietary rights

in the mahal. In the case of *Bharvani Prasad v. Ghulam Muhammad* (2) a division Bench of this Court pointed out that if this was the meaning to be attributed to the words of the section, the object of the Legislature would be easily defeated. This is undoubtedly true. I think it is possible to construe the words "his proprietary rights" as meaning the whole or part of his proprietary rights; but there remains the passage in the section "shall have a right of occupancy in the land held by him as sir in such mahal at the date of such loss or parting." The learned Judges who decided the case just referred to do not consider what meaning would have to be put on those words if an expropriary right arises when a zamindar parts with a portion only of his proprietary rights. I scarcely think that the learned Judges would have held that if a zamindar parted with a mere portion of his proprietary rights he would thereby at once become an expropriary tenant of the whole of the sir land which he had held in the mahal, and yet that is the apparent meaning of the words used by the Legislature. To carry out the view of the Division Bench to its logical conclusion, we should have to read the section as if it ran "shall have a right of occupancy in such portion of the land held by him as sir in such mahal as is proportionate to the proprietary interests he has lost or parted with." This seems to me to trench dangerously on legislation. But in view of the consideration that the construction put upon the section by the Board of Revenue would result—to use the words of the learned Judges who decided the case of *Bharvani Prasad v. Ghulam Muhammad* (1) in opening a door through which it would be possible for evasions of the law to become general in these provinces, I do not wish to depart from the principle *stare decisis*, and I concur in the order proposed.

By THE COURT.—The order of the Court is that the appeal is allowed, the judgment and decree of the lower appellate Court are set aside, and the suit of the plaintiffs is dismissed, but without costs.

Appeal decreed.

(1) (1895) I. L. R., 18 All., 121.

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