

## [APPELLATE CIVIL.]

Before Mr. Justice Bayley and Mr. Justice Paul.

B. DONZELLE (DEFENDANT) v. KEDARNATH CHUCKERBUTTY  
(PLAINTIFF)\*

1871  
July 28.

*Benami—Evidence—Estoppel—Landlord's Title, Dispute of, by Lessee.*

A., executed a kabuliat for a term of years to B., as zemindar. B. gave a putni of the zemindari to C. C. instituted a suit for arrears of rent under the lease for a term of years against A., the lessee. A. in defence admitted the execution of the lease to B., but denied that B. was his real lessor and beneficially entitled to the rent, alleging that B. was only benamidar for a third party.

*Held*, that in India the English doctrine of estoppel did not apply, and that A. was competent in a suit for rent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in the lease.

THE plaintiff, as putnidar, under one Anusul Burkut, of 7-annas of talooka Gungapore Rujnee, sued Mrs. Benjamin Donzelle, manager of the Toolsea Indigo Concern, for arrears of rent of the 1st Kist of 1278 Fusli (1870-71) as tenant under a potta received from, and a kabuliat granted by them in favour of, Anusul Burkut, for a term of years which had not expired.

The defence was that Anusul Burkut was not the real owner, but a mere benamidar for her husband; that the hibanamah by her husband granting her 7-annas of this talooka was nominal; that her husband Golam Hossein was the party actually in possession of the property by receiving the rents up to his death, which occurred in Aghran 1272 (14th November to 13th December 1864), although the lease, its counterpart, and the receipts of rent recited Anusul Burkut as the only proprietress of the property; that after the death of the husband rents had been paid under receipts bearing the sole name of Anusul Burkut, on the understanding that she was the head and manager of the family of her deceased husband, and that the money was shared by all the heirs

\* Special Appeal, No. 501 of 1871, from a decree of the Judge of Bhaugulpore dated 16th April 1871, affirming a decree of the Subordinate Judge of that district, dated the 23rd February 1871.

of Golam Hossein; that on coming to know of the existence of quarrels in 1278 (1870-71) between Anusul Burkut and the other widow of Golam Hossein, payment of rent had been withheld, on the sole receipt of Anusul Burkut; that the other widow and her children took possession of fifteen Annas of the property by going to Bhaugulpore, and gave a putni of it to the defendant; and that the defendant only admitted Anusul Burkut, under whom the plaintiff claimed, to be proprietress of one-sixteenth of the property, being her share under the Mahomedan law.

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The Subordinate Judge of Bhaugulpore, who tried the case in the first instance, laid down the three following issues:

1. "Whether defendant is estopped from denying the title of his lessor or not.
2. "Whether Anusul Burkut was in the receipt of rent of previous years on her own account, or on her own account as well as that of the other heirs of Golam Hossein.
3. "Whether the plaintiff was entitled to receive rent from the defendant or not."

On all these issues the Subordinate Judge decided in favor of the plaintiff and gave a decree for the amount of rent claimed.

The defendant appealed to the District Judge, who upheld the first Court's decree in respect of the first issue, without expressing any opinion on the second issue. The Judge said: "It appears to be unnecessary to enter into the merits of the question of title raised by Mr. Gregory. This is a suit for rent based on a kabuliāt executed in favor of the lady who has granted a putni of the estate to the plaintiff. The Court cannot look behind the kabuliāt on the principle that a tenant cannot, under the circumstances stated by the learned Counsel, deny his landlord's title."

The defendant preferred a special appeal to the High Court against the decision of the Judge.

Mr. G. Gregory (with him Baboo Amar Nath Bose) for the appellant, contended that the Courts below were wrong in not going into the merits of the case, and that upon the defence raised, the recitals in the lease and kabuliāt and receipts of

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rent did not dispose of the question as to who was the person beneficially entitled to the rent; nor are the admissions by the defendant or by her person in ignorance of the true facts of the case, upon which alone the first Court seems to have relied, sufficient; that in a suit for rent, though brought in the name of the party whom the tenant described in his lease as the proprietor, when it was urged in answer that the plaintiff was not the real landlord, the Court was bound to look behind the lease and see who was the person beneficially entitled. He did not dispute his landlord's title, but only resisted payment of rent to a party not really the owner; and that in this country where benami transactions are so common, and do not necessarily carry with them any idea of fraud, the English doctrine that a person is estopped from denying what he has deliberately acknowledged in writing, and that parol evidence cannot be taken to vary a written contract, cannot be extended to its fullest extent. A benami lease in this country is not such a deliberate acknowledgment of the landlord's title. As long as Gblam Hossein lived the rents were sent to him. After his decease the evidence explained how it happened that the rents were sent to Anusul Burkut alone. The first Court even had not gone fully into the evidence. In the course of the argument the cases of *Gopcekrish Gosain v. Gunga Persad Gosain* (1) and *Beni Madhab Ghose v. Thaku Das Mandal* (2) were referred to.

Mr. *Marindin* (with him *Baboos Annada Prasad Banerjee* and *Ramesh Chandra Mitter* and Mr. *Sandel*) for the respondent.—The Judge below was right in holding that he could not look behind the kabuffat or the lease. The doctrine that a tenant cannot dispute his landlord's title is applicable in suits for rent in the *Mefussil*.

This general rule is supported by the judgment of Peacock, C. J., in *Beni Madhab Ghose v. Thaku Das Mandal* (2); and the exception within which that case was held to fall (an exception also recognized by English law) does not apply to the present case. In the converse case of *Bipin Behari Chowdhry*

(1) 6 Moore's I. A., 53.

(2) Case No. 3109 of 1865 under Act X of 1859; 11th September 1866.

v. *Ram Chandra Roy* (1), Peacock, C. J. (Mitter, 7., *dissenting*), went much further, holding, that in the Collector's Court the lessor could not recover rent against persons other than the lessee named in the kabuliat, although it was admitted that they were in actual occupation of the land, and that the nominal lessee was a mere benamidar. This doctrine was supported by Norman, J., in appeal, and, though the majority of the Court (Jackson, J., and Kemp, J.) came to a contrary conclusion, the decision might be supported on the ground that parol evidence may be admitted to charge a person not named in a written document as principal, though it cannot be admitted to discharge a person who on the face of the document appears to contract as principal. This case is no authority for the proposition that a tenant can adduce parol evidence to contradict the title of his lessor admitted by a written document. The estoppel contended for is mutual. The lessor cannot dispute his own title, neither can the lessee. The cases of *Mussamut Purnia v. Torab Ally* (2) and *Jainarayan Bose v. Kadimbini Dasi* (3) support

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(1) 5 B. L. R., 234.

(2) 3 Wyman's Rep., 14.

(3) Before Mr. Justice Lock and Mr. Justice Macpherson.

The 9th July 1869.

JAINARAYAN BOSE AND OTHERS  
(DEFENDANTS) v. KADIMBINI DASII  
(PLAINTIFF).\*

Mr. J. S. Rochfort, Baboo Srinath Das and Durga Das Dutt for the appellants.

Baboo Mahesh Chandra Chowdhry for the respondent.

The judgment of the lower Appellate Court confirmed by the High Court in Special Appeal No. 604 of 1869, was as follows:—

THIS is an appeal against a judgment of the Subordinate Judge dismissing a suit for rent of a certain flatrate instituted by appellant against respondent No. 1.

(Mr. J. Perrin) on the ground that plaintiff (appellant) is only the nominal lessor of the flatrate, and that the transaction upon which the suit is founded was a "benami transaction." The kabuliat executed by the defendant, Mr. J. Perrin, in favor of plaintiff (appellant) has been produced, and its execution admitted. The defendant, however, alleges that he has paid rent under the lease not to plaintiff, but to certain relations of her's, Jainarayan Bose and others (who have accordingly been made co-defendants by the lower Court), and he denies his liability to plaintiff as his lessor.

The case has been argued at great length on both sides, principally with the view of showing whether the transaction was or was not "benami." The lower Court decided the suit partly on the ground that the plaintiff was only the nominal lessor, but principally on the ground that plain

\* Special Appeal, No. 604 of 1869, from a decree of the Officiating Judge of Moorsheadabad, dated 1st March 1869, reversing a decree of the Principal Sudder Ameen of that district, dated 31st January 1868.