PRIVY COUNCIL.

P.C.*
1907
April 23;
June 5.

NABA KUMARI DEBI
v.
BEHARI LAL SEN.

[On appeal from the High Court at Fort William in Bengal.]

Landlord and Tenant—Ejectment—Permanent or precarious tenure—Presumption as to permanent tenure—Unchanged rent—Transfers of tenure—Recognition by landlord of transfers—Deeds of sale, construction of—Receipts for rent not expressly describing transferee as tenant of holding.

In a suit for ejectment on the ground that the defendant was a mere tenant at will, it appeared that the tenure had been in existence for about 80 years; that the rent had never been enhanced though the value of the holding as measured by its sale-price had greatly increased; that it had again and again been sold by kobalas purporting to convey an absolute interest; that it had passed by will; and that the new tenants had been recognized by the landlords after such devolutions:—

Held, that the inference was that it was a permanent tenure.

On the construction of the kobalas: *Held*, that the insertion therein of a stipulation that the transferee should take a new pottah in his own name did not create a new tenure.

Upendra Krishna Mandal v. *Ismail Khan Mahomed*(1), *Nilratan Mandal* v. *Ismail Khan Mahomed*(2), and *Ramchunder Dutt* v. *Jughes Chunder Dutt*(3) followed.

Receipts for rent, though not expressly describing the transferee of the tenure as tenant of the holding, stated that the rent paid was the rent of the tenure, and the person paying was the occupier of it, and was paying on her own account:—

Held, that there was a sufficient recognition of the transferee as tenant.

APPEAL from a judgment and decree (May 20th, 1904) of the High Court at Calcutta, which affirmed a judgment and decree (March 26th, 1902) of the Second Subordinate Judge of the 24-Perganahs.

The defendant was the appellant to His Majesty in Council.

* *Present:* LORD ROBERTSON, LORD COLLINS, AND SIR ARTHUR WILSON.

(1) (1904) I. L. R. 32 Calc. 41; L. R. 31 I. A. 144.

(2) (1904) I. L. R. 32 Calc. 51; L. R. 31 I. A. 149.

(3) (1873) 12 B. L. R. 229, 235.

The suit was brought for ejectment of the defendant, and the main question in this appeal was whether she held the land in suit as a permanent tenure or whether she was a mere tenant at will and liable therefore to be ejected.

The facts were that one Jarip Khansamah purchased about the beginning of the last century a tenure of 13 cottahs of land out of a lakheraj or revenue-free taluk which had been originally acquired by Maharaja Sukhomoney Roy, and took from the Roy family a pottah at an annual rental of Rs. 2-8. The land now in dispute was 5 cottahs of that 13 cottah tenure. Prior to 1822 Jarip Khansamah sold these 5 cottahs to one Mannu Tandel, and on 24th January 1822 that tenure was sold to one Cherie Raur. The conveyance showed the sale to be for Rs. 220. It stated that "you have become entitled to make gift or sale of the said land.....on paying expenses, &c., to the Maharaja Bahadur, and as causing expunction of my name you shall take a pottah in your name." And from a statement of the then Maharaja made on 11th February 1825, it appeared that Cherie Raur on coming into possession as purchaser "has been in enjoyment and occupation, and she, having on 19th Assin 1229 B. S. taken a pottah and delivered a kabuliat in her own name in my serishta, has been paying rent on causing expunction of Mannu Tandel's name."

On 6th Assin 1266 B. S. (21st September 1859) the tenure was sold for Rs. 1,000 by Cherie Raur to Ananda Chandra Chatterjee who purchased it in the name of his wife Gobinda Debi. The conveyance stated that the transferee was entitled to "hold and enjoy with your sons and grandsons in succession .....you have become entitled to make gift or sale of the said land," and the rent was stated in the conveyance to be recorded in the landlord's office "at the old rent of sicca Re. 1."

There was the same stipulation as in the former conveyance that the purchaser should take a new pottah from the landlord, after expunction of the name of the vendor, and so obtain entry of his own name in the landlord's register.

The defendant was the daughter of Ananda Chandra Chatterjee and acquired the property in suit on his death about 1865.

On 29th August 1889 notification of sale was issued of the landlord's interest in the whole taluk stating that it was occupied

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by tenants "either under maurasi rights or under-rights acquired by long occupancy." The land in dispute was purchased at the sale on 1st July 1893 by the plaintiff, Gopal Das Sen, who on 11th October 1897 gave the defendant notice to quit, and subsequently, on 15th September 1900, instituted the present suit to eject her.

The defence was (*inter alia*) that the defendant and her predecessors in title had been from a long time paying the rent at a uniform rate; and that the above mentioned transfers of it had been recognized by the landlords, and that it was a permanent tenure from which the defendant was not liable to be ejected.

The Subordinate Judge held that the facts disclosed by the evidence were not sufficient to warrant the inference that the tenancy was, when first created, intended to be permanent or was subsequently, by implied agreement, converted into a permanent one; that there was no presumption from the holding being transferable and having its rent fixed, in favour of its being permanent; and that the facts that the several kobalas by which the outgoing tenants transferred their respective jotes required the incoming tenants to take fresh leases from the landlord, and that the dakhilas stood in the name of the tenant, the present holder being described as an "occupier," showed that there had not been a strict recognition of the tenancy by the landlord. He also said that the current of recent decisions was in favour of the landlord's right of re-entry even in cases of ancient holdings with permanent structures, and cited *Beni Ram* v. *Kundan Lal* (1), *Ismail Khan Mahomed* v. *Joygoon Bibee* (2) and *Caspersz* v. *Kedar Nath Sarbadhikari* (3).

On appeal, the High Court (RAMPINI and BODILLY JJ.) in affirming the decision of the Subordinate Judge said :—

"The defendant now appeals to this Court; and on her behalf it has been contended that the judgment of the Subordinate Jupge is in every respect incorrect. We are unable, however, to see that this is the case. The learned Subordinate Judge has held that the defendant has no permanent rights in the land and that the land not being subject to the provisions of the Bengal Tenancy Act, there was nothing to prevent the plaintiff from evicting the defendant. It appears to us

(1) (1899) I. L. R. 21 All. 496; L. R. 26 I. A. 58.
(2) (1900) 4 C. W. N. 210.
(3) (1901) 5 C. W. N. 858.

that this decision is correct for the following reasons. In the first place, admittedly there is no *pottah* or grant of a permanent nature, on which the defendant can rely. It is admitted that the only way in which the defendant can be held to have a permanent right is by inference from the circumstances of the case. But on the other hand, it appears to us that there are documents which are inconsistent with the hypothesis that the tenancy of the defendant is of a permanent nature. These documents are the two *kobalas* filed in this case, executed by tenants in possession of the land in favour of their successors. Now, in both these *kobalas* the transferer conveys the land to the transferee, but expressly recites that the transferee, on paying the expenses, &c., of the Maharaja Bahadur and on causing the expunction of the transferer's name, shall take a *pottah* in his own name. If the tenancy was of a permanent nature there would be no necessity for such a clause in either of the deeds, and the insertion of this clause in both deeds is against the presumption that the land in dispute is the subject of a permanent grant. As pointed out by the Subordinate Judge, the tenancy is of an old date. We are informed that the first *pottah* of which there is any trace in connection with this land is of 1821; and the transfers, as we have seen, date from 1822 downwards. But there is no settled rule laid down in any case shown to us which is to the effect that long possession of holdings for upwards of 80 years necessarily implies the permanency of the tenancy.

"Then, in the second place, no doubt several transfers have taken place, and a discussion has been raised before us as to whether the landlord has admitted the transferee as tenant or not. There are two series of receipts. What the Subordinate Judge has said in his judgment with regard to the receipts is that in them the name of the old tenant is given and that the transferee is described simply as an 'occupier.' Now, that is perfectly correct at least with regard to the second series of dakhilas. In these the name of the *sabek praja* or old tenant is given and the name of the transferee is entered after the word 'dakhilkar.' That means the person in possession and not necessarily the tenant in possession. But whatever the proper meaning of the dakhilas may be, they do not show that the tenancy was of a permanent nature. The transfers may have taken place with the consent of the landlord or independently of him; but these documents are not conclusive evidence one way or the other.

"Then the learned pleader for the appellant has laid great stress on the fact that the rent of the land has remained unchanged since the year 1821. But the explanation of this seems to be that the land was debutter land the tenure being created in 1811. Then there was a suit brought for this land which was not disposed of till 1857. Subsequently a receiver was appointed; and the receiver was not removed until 1895; so that it was not until 1895 that the plaintiff was in a position to enhance the rent of this land.

"Then the Subordinate Judge has pointed out that there are no permanent buildings on the land in dispute; and that there is no evidence of estoppel arising against the landlord. This appears to us to be correct. There is no estoppel arising against the landlord from the fact of his having stood by and allowed the tenant to improve the land or erect expensive or permanent buildings upon it.

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"Finally, the Subordinate Judge has pointed out that in the sale notification which was drawn up by the Registrar of the Original Side of this Court the lands have been described as in the occupation of tenants with permanent rights. But this cannot bind the plaintiff because the sale notification was drawn up, not at his instance, but by the Registrar, independently of him. Furthermore, after the sale took place and the deed of sale was drawn up by which the transfer was actually effected the words describing the rights of the persons in possession as permanent were, as pointed out by the Subordinate Judge, conspicuous by their absence."

On this appeal, which was heard *ex parte*,

C. W. Arathoon and *L. De Gruyther*, for the appellant, contended that on the proved facts of the case the Courts below ought to have held that the tenure was a permanent one. The rent during a very long period dating from the origin of the tenure had never been changed; and the various transfers made of the land in suit showed a continuity of tenure; the effect of the purchaser obtaining entry of his own name in the landlord's register, and taking a fresh pottah was not to constitute a new tenure; and the rent receipts showed that the landlord recognized the transferee as tenant of the holding, and not merely the occupier. Finally, the tenure was described in the sale notification as a permanent tenure. There was therefore nothing to displace the inference from the findings of fact that the tenure was a permanent one. Moreover, the decision of the Courts in India conflicted with rulings of the Privy Council which had reversed decisions of the same High Court in previous and similar cases. Reference was made to *Upendra Krishna Mandal* v. *Ismail Khan Mahomed*(1) and *Nilratan Mandal* v. *Ismail Khan Mahomed*(2). It was submitted that the cases of *Beni Ram* v. *Kundun Lal*(3) and *Ismail Khan Mahomed* v. *Joygoon Bibi*(4), cited by the Subordinate Judge, did not affect the point now under consideration; and that of *Caspersz* v. *Kedar Nath Sarbadhikari*(5) was in favour of the appellant's contention. *Ram Chunder Dutt* v. *Jogesh Chunder Dutt*(6) was

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(2) (1904) I. L. R. 32 Calc. 51; L. R. 31 I. A. 149.
(3) (1899) I. L. R. 21 All. 496; L. R. 26 I. A. 58.
(4) (1900) 4 C. W. N. 210.
(5) (1901) 5 C. W. N. 858.
(6) (1873) 12 B. L. R. 229.

cited and relied on, and it was contended that no case for ejectment had been established.

The judgment of their Lordships was delivered by

SIR ARTHUR WILSON. The suit out of which this appeal arises was brought by a landlord against his tenant to eject the tenant, on the ground that the latter was a mere tenant at will. The defence was that the tenant held a tenure of a permanent character and was not liable to be evicted at will. The sole question on this appeal is which of these views is correct.

The Subordinate Judge, Second Court, of the Twenty-four Perganas, who tried the case, gave a decree in favour of the plaintiff, who is now represented by the respondents; and the High Court supported that decision. Hence the present appeal.

There is no question that the tenure or holding, whatever may be its nature, had been in existence for about 80 years, and probably much more, when the suit was instituted. The rent was an almost nominal one, and had never been enhanced, though the value of the holding, as measured by its sale price, had greatly increased. It had been sold again and again by kobalas purporting to convey an absolute interest; it had passed by will. And the rent had been accepted from the new tenants after such devolutions.

From these facts only one inference seems possible, namely, that the tenant held a permanent tenure. But the Courts in India held that that inference was excluded on two grounds. The first may be conveniently stated in the words of the learne Judges of the High Court:—

"It appears to us that there are documents which are inconsistent with the hypothesis that the tenancy of the defendant is of a permanent nature. These documents are the two *kobalas* filed in this case, executed by tenants in possession of the land in favour of their successors. Now, in both these *kobalas* the transferer conveys the land to the transferee, but expressly recites that the transferee, on paying the expenses, &c., of the Maharaja Bahadur and on causing the expunction of the transferer's name, shall take a *patta* in his own name. If the tenancy was of a permanent nature there would be no necessity for such a clause in either of the deeds, and the insertion of this clause in both deeds is against the presumption that the land in dispute is the subject of a permanent grant."

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The view there expressed as to the effect of taking a new pottah is inconsistent with the decisions of this Board in *Upendra Krishna Mandal* v. *Ismail Khan Mahomed*(1) and *Nilratan Mandal* v. *Ismail Khan Mahomed*(2), which decisions again were in accordance with the law laid down in the earlier case of *Ramchunder Dutt* v. *Jugheschunder Dutt*(3).

The second ground upon which it was said that the tenure was not a permanent one was that the landlord had not been proved to have assented to the several transfers of the holding.

The assent relied upon was the receipt of the rent of the holding from the transferees in their own names. The reason given by the High Court for holding this to be insufficient is that they think the dakhilas acknowledging such receipts, when critically examined, do not expressly describe the transferee as tenant of the holding. That observation may be assumed to be correct. But the dakhilas do describe the rent paid as the rent of the holding, and the person paying as occupier of the holding, and as paying on her own account. Their Lordships think that is quite a sufficient recognition of the transferee as tenant.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, the decrees of both Courts in India discharged, and the suit dismissed with costs in all Courts. The respondents will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: *T. L. Wilson & Co.*

J. V. W.

(1) (1904) I. L. R. 32 Calc. 41; L. R. 31 I. A. 144.

(2) (1904) I. L. R. 32 Calc. 51; L. R. 31 I. A. 149.

(3) (1873) 12 B. L. R. 229, 235.