

## APPELLATE CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and  
Mr. Justice Cox.*

1908  
Jan. 22.

BANWARI MUKUNDA DEB

v.

BIDHU SUNDAR THAKUR.\*

*Chaukidari chakran lands—Resumption by Government—Suit for possession—  
Village Chaukidari Act (Bengal Act VI of 1870), s. 51—Specific perfor-  
mance of contract, suit for.*

Where some of the *putnidars* and the *dur-putnidar* brought a suit, making the remaining *putnidar* a defendant, to recover possession of *chakran* lands found to be a part of the *putni* :—

*Held*, that this was not an action for specific performance of contract, but for possession of *chakran* lands included in the *putni*.

*Ranjit Singh v. Radha Charan Chandra*(1) dissented from.

*Kazi Newaz Khoda v. Ram Jadu Dey*(2) and *Hari Narain Mozumdar v. Mukund Lal Mundal*(3) referred to.

SECOND APPEAL by Kumar Banwari Mukunda Deb, defendant No. 2.

On the 2nd Baisakh 1230 (corresponding to 14th April 1823), Kumar Banwari Lal Bahadur and two others, the predecessors of defendants Nos. 1 and 2, granted a *putni* of Mauza Kundal by a *patta* to Gaursundar Thakur, the common ancestor of the plaintiffs and the *pro forma* defendant. Plaintiffs Nos. 1 to 8 had an one-third share in the *putni taluq*, plaintiff No. 9 another third and defendant No. 3 the remaining third. Defendant No. 3 let out his share in the tenure to plaintiff No. 10 in *dur-putni*. This plaintiff No. 10 was the same person as plaintiff No. 3. By a deed, plaintiffs Nos. 1 to 8 dedicated their one-third share to Thakur Giridhar Jiu and constituted themselves his

\* Appeal from Appellate Decree, No. 497 of 1906, against the decree of Bepin Behary Chatterjee, Subordinate Judge of Murshidabad, dated Dec. 2, 1905, confirming the decree of Asutosh Banerjee, Munsif of Kandi, dated May 17, 1904.

(1) (1907) I. L. R. 34 Cal. 564.

(2) (1906) I. L. R. 34 Cal. 109.

(3) (1900) 4 C. W. N. 814.

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*shebaitis*. The lands in suit which are situated within the mauza Kundal and were formerly held as *chaukidari chakran* lands, were resumed by Government and settled with the zemindar defendants Nos. 1 and 2, subject to the provisions of s. 51 of the Village Chaukidari Act, at an annual *jama* of Rs. 37-4. This suit was instituted by the plaintiffs to recover  *khas* possession of the resumed *chaukidari chakran* lands on payment to the zemindars of the *jama* fixed by the Government.

Defendant No. 2 alone contested the suit.

Both the Courts below decreed the suit.

*The Hon'ble Dr. Rash Behary Ghose (Babu Khettra Mohan Sen with him)*, for the appellant. This suit ought to be looked upon as one for specific performance of contract, and, therefore, the suit as framed is not maintainable. All the *putnidars* must be made co-plaintiffs. The *dur-putnidar* cannot sue with the *putnidars*: *Ranjit Singh v. Radha Charan Chandra*(1). In form this is a suit for ejection: *Safur Rahman v. Maharamunnessa Bibi*(2).

*Babu Nilnadhav Bose (Babu Hemendra Nath Sen with him)*, for the respondents. This is not a suit for specific performance of a contract. This is a suit for recovery of possession. The *putni* is a concluded contract. Rampini J. who was one of the judges deciding the case, *Ranjit Singh v. Radha Charan Chandra*(1), expressed his views differently in previous cases—*Kazi Newaz Khoda v. Ram Jadu Dey*(3) and *Hari Narain Mozumdar v. Mukund Lal Mundal*(4). Probably the attention of the learned Judge was not called on this point to his former decisions. Under s. 41 of Regulation VIII of 1793, *chaukidari chakran* lands were made part of *malguzar* lands: *Joykishen Mookerjee v. Collector of East Burdwan*(5). All the parties are before the Court either as plaintiffs or defendants, and the Court can transfer defendant No. 3 from the category of defendants to that of plaintiffs.

*Dr. Ghose*, in reply. The attention of the learned Judges who decided the case of *Ranjit Singh v. Radha Charan Chandra*(1)

(1) (1807) I. L. R. 34 Cal. 564. (3) (1906) I. L. R. 34 Cal. 109, 111, 113.

(2) (1897) I. L. R. 24 Cal. 832. (4) (1900) 4 C. W. N. 814, 816, 817.

(5) (1864) 10 Moo. I. A. 16, 41.

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was called to the previous decisions, as would appear from a report of the arguments. Court can only transfer a defendant to be a plaintiff with his consent. No such attempt was, however, made in this case.

MACLEAN, C. J. The only point argued on this appeal is whether the plaintiffs are entitled to recover judgment having regard to the frame of the suit. It appears under a *patta* dated 1823, that the then zemindar granted to the predecessors-in-title of the plaintiffs a *putni* giving them possession of a certain mauza including the *chakran* lands. It is clear upon the face of the *putni patta*, specially having regard to section 41 of Regulation VIII of 1793, that at the time of the *putni* the zemindar was the owner of the *chakran* lands and that these lands are included in and covered by the *putni*. The *chakran* lands were subsequently transferred to the zemindar who took the transfer subject to the provisions of section 51 of the Village Chaudhari Act (VI, B. C.) of 1870, and the plaintiffs now bring the present suit to recover possession of these *chakran* lands. Plaintiffs Nos. 1 to 8 are entitled to an one-third share under the *putni*; plaintiff No. 9 to another third; and defendant No. 3 to the remaining third, and he, it appears, let out his interest in *dur-putni* to plaintiff No. 10 who is the same person as plaintiff No. 3. So that, we have before the Court all the persons who are interested in the *putni* and all the persons who are entitled to claim possession of the lands in question, as against the zemindar: in other words, every body interested in the *putni* is before the Court, either as plaintiff or as defendant, the suit being one for possession of the *chakran* lands. Then it is said that this is not a suit for possession but is a suit for specific performance of a contract, and being a suit for specific performance of a contract, the suit cannot successfully prevail, unless all the parties to the contract who seek to have it specifically performed are co-plaintiffs. The answer to that appears to be two-fold. I do not think this is an action for specific performance of a contract. This is an action for possession of the *chakran* lands which were included in the *putni* to which I have

referred. There is no agreement to grant a *putni* of these lands when they were transferred to the zemindar of which it is necessary to obtain a decree for specific performance. The *putni* is a concluded contract, and there is no agreement of which specific performance can now properly be granted. There is, no doubt, authority for the opposite view in the case of *Ranjit Singh v. Radha Charan Chandra*(1). But, with great respect, I do not assent to the view expressed in that judgment which seems to me to be inconsistent with the previous judgment of one of the learned Judges who was a party to the later decision, namely in the case of *Kasi Newaz Khoda v. Ram Jadu Dey*(2), and also in the case of *Hari Narain Mozumdar v. Mubund Lal Mundal*(3). The two decisions I have just mentioned appear to me to be inconsistent with the view taken in the case reported in *Ranjit Singh v. Radha Charan*(1). I do not notice they were referred to in the judgment in that case. If then it is a suit merely for possession under the contract contained in the *putni*, I think the suit is properly framed: and, agreeing with both Courts, I think the plaintiffs are entitled to judgment.

As regards the other two points, the point as to whether the idol ought to have been made a party and the question what rent should be paid for the resumed lands, as no argument has been addressed to us on those points, and they have been abandoned, I need say nothing about them.

The appeal fails and must be dismissed with costs.

COXE J. I agree.

*Appeal dismissed.*

S. M.

- (1) (1907) I. L. R. 34 Cal. 564.      (2) (1906) I. L. R. 34 Calc. 109.  
 (3) (1900) 4 C. W. N. 814.

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