

Before Mr. Justice Mitra and Mr. Justice Caspersz.

KRISHNA KINKAR DUTT

v.

BHAGWAN DAS.\*

1907

Nov. 12.

*Chaukidari Chakran lands—The Village Chaukidari Act (Beng. VI of 1870), s. 51, construction of—Right created by the chaukidar, effect of.*

The words "subject to all contracts heretofore made . . . in which such land may be situate" in section 51 of Act VI (B. C.) of 1870, refer to contracts in the nature of putnis or mokararis created by the zemindar himself in respect of the village in which the chaukidar's land or any portion of it is situate, and do not reserve the rights created by the chaukidar, whose land is resumed, in favour of a third person.

SECOND APPEAL by the defendants, Krishna Kinkar Dutt and another.

This appeal arose out of a suit in ejectment brought by the plaintiff, Mahant Bhagwan Das, against the defendants, Krishna Kinkar Dutt and another, who were sub-lessees holding their homestead under a resumed chaukidari service tenure. The dispute referred to two plots of land; of which one plot was settled with the defendants by the Collector of the district, on behalf of the chaukidar, for a period of 25 years; and the other plot the chaukidar settled with them personally. Afterwards the chakran lands were resumed by Government and settled with the zemindar of the estate, from whom the plaintiff obtained a *putni* lease of an eight-anna share of the estate. The plaintiff by a subsequent purchase became the owner of the 16 annas of the *putni* right, of which the *pro forma* defendants were *durputnidars* of eight annas share. The allegation of the plaintiff was that the right of the defendants, if any, had been annulled by the resumption of the service tenure, and they being trespassers were liable to be ejected from the two plots with respect to the

\* Appeal from Appellate Decree, No. 209 of 1906, against the decree of Umesh Chandra Sen, Subordinate Judge of Birbhum, dated Dec. 8, 1905, reversing the decree of Durga Das Chakravarti, Munsif of Rampur Hat, dated May 29, 1905.

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eight-anna share, and the plaintiff was entitled to recover khas possession of the same.

The defendants pleaded, *inter alia*, that they were let into the possession by the previous owner, and were in possession for over 30 years; that their right to the lands in dispute had not been annulled, as section 51 of the Village Chaudidari Act (VI B.C. of 1870) reserved the rights created by the chaudidar, whose land was resumed, in favour of a third person; and that, at any rate, they were entitled to rely on the lease for 25 years, granted by the Collector of the district in favour of them.

The Court of first instance dismissed the suit for khas possession as regards the plot settled with the defendants by the Collector, and passed a decree for ejection as regards the other plot. On appeal, the learned Subordinate Judge passed a decree in favour of the plaintiff in respect of both the plots.

Against this decision the defendants appealed to the High Court.

*Babu Digambar Chatterjee (Babu Gobinda Chandra Roy with him)*, for the appellants. Section 51 of the Village Chaudidari Act expressly makes the transfer subject to all contracts; there is no limitation placed on the word contract; the contract made by the Collector on behalf of the chaudidar, and that made by the chaudidar himself must therefore subsist notwithstanding the resumption of the land: see *Shaikh Jonab Ali v. Rakibuddin Malik*(1). The object of the section is to save all contractual rights of persons other than the zemindar. The Collector in representing the Secretary of State has made the first contract for 25 years, and when afterwards he made the transfer, this must be subject to that contract. The law does not anywhere say that the contract to be saved must be one to which the zemindar was a party. The zemindar had no present interest. The chaudidar was the present holder and the Collector represented the Government; such a transaction ought to stand. It has been held in the case of *Ram Kumar Bhattacharjee v. Ram Neeraj Rajguru*(2) that a sub-lessee under a chaudidar was entitled to a

(1) (1905) 9 C. W. N. 571, 575.

(2) (1904) I. L. R. 31 Calc, 1021;  
 8 C. W. N. 860.

right of occupancy. Here the land being *bustee*, no such right can be claimed, but it shows that a sub-lessee under a *chaukidar* is not wiped out by the mere fact of resumption. Besides, the Government was in possession for several years, and the *punchayats* realised rent from the defendants. There was an acceptance of the tenancy by the Government after resumption, and the plaintiffs deriving title from the Government must also accept the defendants as tenants.

*Babu Lal Mohon Das* (*Babu Surendra Krishna Dutt* with him), for the respondents, was not called upon.

MITRA AND CASPERSZ JJ. The main question argued before us refers to the construction to be put on the last words of section 51 of Act VI (B.C.) of 1870. Under section 59 of the Act, the Collector is authorized to make a transfer of resumed *chaukidari* land to the *zemindar*. Section 51 says that the transfer shall be subject to the amount of assessment mentioned in the deed of transfer which is to be in the form prescribed in Schedule C of the Act and "subject to all contracts heretofore made in respect of, under, or by virtue of, which any person other than the *zemindar* may have any right to any land, portion of his estate or tenure in the place in which such land may be situate."

The contention before us is that the words quoted above reserve the rights created by the *chaukidar* whose land is resumed in favour of a third person. We are of opinion that this contention is not sustainable. The words evidently refer to a contract made by the *zemindar* in respect of the village in which the *chaukidari* land or any portion of it is situated. This has been the view taken in a series of cases decided by this Court, and the form as given in Schedule C confirms the view that has been taken in these cases. The last words of the form are "subject to all contracts binding the said . . . in respect of any lands, portion of the said . . . situated within the said village." Thus the section evidently refers to contracts in the nature of *putnis* or *mukararis* created by the *zemindar* himself in favour of third persons. If the transfer is made to the *zemindar* and the *zamindar* has already granted a sub-lease of the entire village,

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including the chaukidari land, the sub-lessee would be entitled to the benefit of the transfer made by the Collector under the Act. It would go against the principle of the Act itself and the well-known status of chaukidars if we were to hold that the rights created by the chaukidar would subsist notwithstanding the transfer by the Collector by virtue of the provisions contained in section 51 of the Act. A chaukidar is in possession of chaukidari land for the purpose of certain services, and his interest is limited to the period during which he serves the estate or the zemindar. As soon as his service ceases, his right to the land ceases. The grantor ceasing to have right in the land, the grantee must necessarily cease to have right under any grant made by the grantor.

We are, therefore, of opinion that both on principle and on the construction of section 51 of Act VI (B.C.) of 1870, the leases created by the chaukidar must be held to have ceased upon the transfer by the Collector of the land to the zemindar. Our judgment with respect to this point will cover both the plots A and B which are the subjects of dispute in this case.

As regards plot A, a further contention has been raised, namely, that the Magistrate of the District having granted a lease for 25 years in favour of the appellants, they are entitled to rely on that lease in any suit for ejectment by the transferee from the Government. It does not, however, appear that the Magistrate or the Collector had any power to grant such a lease, and it would seem from the wording of the lease itself that the Magistrate or the Collector intended to act on behalf of the chaukidar. If that is so, the grant of a lease by the Magistrate or the Collector could not be of any use as against the transferee. The Magistrate or the Collector stood in the same position as the chaukidar himself. And then again if the lease be considered as one created by the chaukidar himself, the lease is void for non-registration, inasmuch as it was executed after the Transfer of Property Act came into force. For these reasons, we are of opinion that this appeal must fail, and it is accordingly dismissed with costs.

*Appeal dismissed.*