Before Mr. Justice Rampini and Mr. Justice Pratt.

UPENDRA NARAIN BHUTTACHARJEE

v.

PRATAP CHUNDER PARDHAN.*

1903
Nov. 20, 24.

Chowkidari chakran land, resumption of—Putni lease—Ejectment of former tenant.

When under the terms of a putni lease, the putnidar is entitled to all resumed lands, and certain *chowkidari chakran* land within the putni is resumed by Government and made over to the zemindar, the zemindar cannot, by allowing the old chowkidar to remain on the land and accepting rent from him, protect the latter from ejectment at the instance of the putnidar.

Binad Lal Pakrashi v. *Kalu Pramanik* (1) and *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (2) distinguished.

SECOND APPEAL by the plaintiff, Upendra Narain Bhuttacharjee.

The plaintiff took in November 1898 five years' lease of 61 bighas 3 cottahs of chowkidari chakran lands situate in village Srisara, from Baikanta Nath Sen Barat, putnidar of 10 annas share of Pergunnah Satsoika, within which the said village is situate.

The Government, having resumed these lands under Bengal Act VI of 187[illegible] transferred the same to the zemindar, represented by the defendant No. 2, J. P. Melitus.

Under the terms of the putni lease, the *chakran* lands were included in the putni and the putnidar was only to pay additional revenue that might be imposed by Government by resumption and settlement with the zemindar of the same. It

* Appeal from Appellate Decree No. 399 of 1901, against the decree of Jogendra Chunder Moulick, Subordinate Judge of Burdwan, dated the 20th December 1900, reversing the decree of Babu Purno Chunder Chowdhry, Munsiff of Cutwa, dated the 23rd December 1899.

(1) (1893) I. L. R. 20 Calc. 708. (2) (1900) 4 C. W. N. 814.

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appears that the zemindar settled the lands with the old chowkidars, one plot of 10 bighas and 11 cottahs being settled with Pratap Chunder Pardhan, the defendant No. 1.

The present suit was instituted for a declaration of the plaintiff's right to the aforesaid 10 bighas and 11 cottahs of land and for possession of the same, together with the further declaration that the defendant No. 2 had no right to settle the land with the defendant No. 1. The Munsif decreed the suit, but on appeal by the tenant defendant, the decree was modified by the Subordinate Judge, who, following the case of *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (1), held that the tenant defendant was entitled to retain possession of the land and the putnidar or the plaintiff was only entitled to recover rent from him.

Babu Saroda Charan Mitra (*Dr. Asutosh Mukerjee*, *Babu Hemendra Nath Sen* and *Babu Tarack Chandra Chakrabarti*, with him), for the appellant. A lessor cannot exercise the rights conferred on his lessee under the lease, unless the same has been validly transferred to him. In the present case the zemindar knew not only that he had no power to settle the *chakran* lands, but that under the term of the *putni* lease such power rested with the *putnidar*. The settlement which the zemindar made with the tenants was therefore not *bonâ fide*, and the principle of the cases of *Binad Lal Pakrashi* v. *Kalu Pramanik* (2) and *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (1) did not apply. The *putnidar* is deprived of what he could have fairly earned by a fresh settlement.

Babu Karuna Sindhu Mukerjee (*Babu Surendra Nath Ghosal* with him) for the respondent, relied upon the aforesaid cases, and contended that, when the tenants were in actual possession, they could not be ejected.

Cur. adv. vult.

RAMPINI AND PRATT JJ. These six appeals relate to six suits brought by the plaintiff for the possession of certain chowkidari chakran lands resumed by Government and now in the possession

(1) (1900) 4 C. W. N. 814. (2) (1893) I. L. R. 20 Calc. 708.

of the tenant defendants. The Government made over the land to the zemindar defendant, who allowed the tenant defendants (who were the old chowkidars) to remain on the lands and accepted rent from them. The plaintiff is a lessee under a putnidar under the zemindar defendant. By the terms of the putnidar's putni lease he is entitled to all resumed lands without any adjustment of his rent. He has therefore a right to the disputed lands, and the plaintiff, as his representative, can evict the tenant defendants from them, if they do not come to terms with him, which they apparently have not done. The first Court accordingly decreed the suits in favour of the plaintiff. The second Court has modified the decree of the first Court, relying on the decision of *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (1) and has directed that the plaintiff may recover rent from the tenant defendants, but he cannot eject them.

The plaintiff now appeals.

We think the lower Appellate Court has misunderstood the *ratio decidendi* of the case of *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (1). In that case the zemindar defendant seems to have been put in actual possession of the lands by Government, and, while in that position, to have let the lands to the tenant defendants. The plaintiff in that suit did not at first come to terms with him. In the course of that suit it was settled on what terms the plaintiff was to obtain possession of the lands, and when that was done, it was too late to turn out the tenant defendants, for they had been accepted as tenants by the *defacto* landlord. The case is quite different in the present suit. The zemindar defendant seems to have accepted the tenant defendants as his tenants and to have taken rent from them *malafide*. It has been found by both Courts that he had no right to do this under the terms of the pottah he had granted to the putnidar, against whom he had no further claim, and of which terms he must have been well aware. The tenant defendants may have acted *bonâ fide*, but the zemindar defendant did not. The case of *Binad Lal Pakrashi* v. *Kalu Pramanik*(2) is the leading case on this subject. It made a great encroachment on the strict

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law, according to which a landlord, who has no title, can give no title to a third person and a person, who has a title, can give a title to another only for as long as his own title endures. But in the case of *Binad Lal Pakrashi* v. *Kalu Pramanik*(1) and the cases in which it has been followed, the *defacto* zemindar was litigating with another or was deprived of his title as the result of a subsequent litigation. It could not be expected that he would let his lands lie fallow, and it would be hard on the raiyats, if they were afterwards ejected, when it was found that he had no title. Hence they were held to have acquired the status of tenants. But it never was intended to be laid down that a person knowing that he had no title could induct persons into the lands of others, and that the persons so inducted could not be evicted by the rightful owners. This has been laid down in no case. If this were the law, then any outsider could constitute any other person the tenant of any landlord and deprive such landlord of all right of letting his own land. This cannot be allowed. We therefore consider the decree of the lower Appellate Court in these cases to be wrong. We set it aside and restore the decrees of the first Court. This order carries costs.

Appeal decreed.

M. N. R.

(1) (1893) I. L. R. 20 Calc. 708.