

APPELLATE CIVIL.

Before Mr. Justice Richardson and Mr. Justice Chatterjee.

JAGATTARA DASSI

v.

DAULATI BEWA.*

1909

June 28.

Landlord and Tenant—Decree against recorded tenant, effect of—Representation, principle of.

When the recorded tenant represents a holding on behalf of all his co-sharers, such holding passes by a sale in execution of a decree for arrears of rent obtained by the landlord against such tenant.

Ashok Bhuiyan v. Karim Bepari (1) discussed.

SECOND APPEAL by the defendant No. 4, Jagattara Dassi.

This appeal arose out of a suit brought by the plaintiff to recover possession of an eight-anna share of the disputed lands after establishment of title thereto by right of inheritance. The plaintiff stated that her father-in-law had a *jama* under one Bejoy Sankar Sikdar and others; that on her father-in-law's death defendant No. 1 and plaintiff's husband, who were brothers, were in possession of the said *jama* in equal shares; that her husband died 7 or 8 years ago leaving her, a son and a daughter, as heirs; that on the death of her son and daughter, she remained in possession of the eight-anna share by receiving rent from the tenants; that in Baisakh 1313 B.S., the defendants collusively dispossessed her from the disputed lands alleging that the defendants Nos. 2 to 6 purchased this *jama* at an auction sale; and that the decree in execution of which the defendants purchased was collusive and fraudulent.

Defendant No. 4, the principal defendant in the case, pleaded, *inter alia*, that she purchased the holding in execution of the decree obtained by the landlord against the recorded

* Appeal from Appellate Decree, No. 374 of 1908, against the decree of S. B. Chowdhuri, Additional District Judge of Jessore, dated Dec. 11, 1907, confirming the decree of Amrita Lal Mukerjee, Munsif of Magura, dated April 9, 1907.

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tenant, and as such the entire holding passed to her, and that the rent-decree culminating in the auction sale was not collusive and fraudulent.

The Court of first instance decreed the plaintiff's suit. On appeal, the learned Additional District Judge confirmed the decision of the first Court. Against this decision the defendant No. 4 appealed to the High Court.

Babu Sarai Chandra Roy Choudhry, for the appellant. The learned Judge of the Court below has decided the case in favor of the plaintiff, relying upon the case of *Ashok Bhuiyan v. Karim Bepari* (1). The reasoning on which that decision is based is, if I may so submit without any disrespect to the learned Judges, not sound. The earliest and the leading case on the subject is the case of *Jeo Lal Singh v. Gunga Pershad* (2). In that case although the sale certificate showed, that only the right, title and interest of the recorded tenant was sold, yet their Lordships held that the whole tenure passed. The principle upon which the decision was based is that the recorded tenant represented the tenure on behalf of all the co-sharers. That case has ever since been followed and the principle has been applied to all cases of sales of tenures as also of occupancy holdings: *Mati Lal Poddar v. Nripendra Nath Ray Chowdhry* (3), *Nazir Mahomed Sirkar v. Girish Chunder Chowdhuri* (4), *Nitayi Behari Saha Paramanick v. Hari Govinda Saha* (5), *Rajani Kant Guho v. Uzir Bibi* (6) and *Afraz Mollah v. Kulsumannessa Bibee* (7). The fact that the Tenancy Act makes provision for the registration of the names of the heirs of a deceased tenure-holder and not of the heirs of a deceased raiyat, does not make any difference, for section 16 clearly shows that the object of those provisions is for the protection of tenants under such tenure-holders.

No one appeared for the respondents.

Cur. adv. vult.

(1) (1905) 9 C. W. N. 843.

(4) (1897) 2 C. W. N. 251.

(2) (1884) I. L. R. 10 Cal. 996.

(5) (1899) I. L. R. 26 Cal. 677.

(3) (1897) 2 C. W. N. 172.

(6) (1902) 7 C. W. N. 170.

(7) (1905) 10 C. W. N. 176.

RICHARDSON AND CHATTERJEE JJ. In this suit the plaintiff, Daulati Bewa, sought to establish her title to an eight-anna share of a raiyati holding by right of inheritance.

It appears that the holding originally stood in the name of Narandi Sheikh, the plaintiff's father-in-law. On his death, it descended to the plaintiff's husband and to his brother, the defendant No. 1. The name of the latter only was recorded as tenant in the landlord's office. Subsequently, the plaintiff's husband died leaving his widow, a minor son and a daughter. The two children also died; and, under the Mahomedan Law, the plaintiff became entitled, as between herself and her brother-in-law, to a four-anna $1\frac{1}{2}$ pies share of the holding. Her suit, if it succeeds at all, can only succeed to that extent.

The only other defendant who need be mentioned is defendant No. 4. She contends that the whole holding was purchased by her at a sale held in execution of a decree for arrears of rent obtained by the landlord of the holding against the recorded tenant.

In the Court of first instance, the plaintiff obtained a decree to the extent of her share as above determined. The decree has been confirmed on appeal by the learned Additional District Judge, and the defendant No. 4 has appealed to this Court.

The judgment of the Additional District Judge rests entirely on the ruling of this Court in the case of *Ashok Bhuiyan v. Karim Bepari* (1). It was there held that there being no law obligatory on tenants who are not tenure-holders to get their names recorded in the landlord's *sherista* for the purpose of perfecting their title, the sale of a jote in execution of a decree for rent obtained against the recorded tenants does not pass the interest of the tenants whose names are not registered in the landlord's *sherista*. The case of *Nitaji Behari Saha Paramanick v. Hari Govinda Saha* (2) was distinguished on the ground that in that case there was a tenure and the tenants were bound to register their names in the landlord's *sherista*.

We think, however, that the case of *Ashok Bhuiyan v. Karim Bepari* (1) has been given a significance more far reaching than

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was intended, and that the language employed in the judgment means no more than that a landlord is not justified in treating the registered tenant of a raiyati holding as the sole tenant merely because his co-sharers in the holding are not registered. The principle of representation is not referred to and there is no necessary implication that that principle cannot apply to a raiyati holding. There is nothing in the case which prevents the whole body of tenants of a raiyati holding electing to treat one of their number as their representative in their dealings with the landlord. But registration is not everything. The fact that only one tenant is registered is merely an item in the evidence upon the question whether he is or is not the representative tenant *quâ* the landlord.

In further support of our view of *Ashok Bhuiyan's case* (1), we may mention that no reference is made to previous cases in which the principle of representation has been applied or treated as applicable to raiyati holdings, for instance : *Mati Lal Poddar v. Nripendra Nath Roy Chowdhury* (2), *Ananda Kumar Naskar v. Hari Dass Haldar* (3), *Rupram Namasudra v. Iswar Namasudra* (4), *Rajani Kant Guho v. Uzir Bibi* (5). There is also the subsequent case of *Afraz Mollah v. Kulsum-annessa Bibee* (6).

Moreover, it may be observed that under the present rent law, as enacted in the Bengal Tenancy Act, the distinction between tenures and raiyati holdings in the connection we are now considering, has been largely obliterated. It was pointed out in the case of *Ambika Pershad v. Chowdhry Keshri Sahai* (7), that under the Bengal Tenancy Act a suit by a raiyat for the registration of his name in the landlord's *sherista* cannot be maintained because it is no longer compulsory for the zemindar to register the name of any tenant in his *sherista*. The Act, it is said, provides for the official registration of transfers of the rights of permanent tenure-holders and raiyats holding

(1) (1905) 9 C. W. N. 843.

(2) (1897) 2 C. W. N. 172.

(3) (1900) 1. L. R. 27 Calc. 545.

(4) (1902) 6 C. W. N. 302.

(5) (1902) 7 C. W. N. 170.

(6) (1905) 10 C. W. N. 176.

(7) (1897) 1. L. R. 24 Calc. 642.

at fixed rents. But the transfers of occupancy rights are not so registered and there is no provision of law by which they can be registered in the landlord's *sherista*. This case was referred to in the case of *Moti Lal Singh v. Sheik Omar Ali* (1), where it was held that a *se-patnidar* is not entitled to sue a *dar-patnidar* to compel him to register his name in his *sherista* as the transferee of a *se-patni* tenure, but it is open to him to sue for a declaration of his right as the tenant of the *dar-patnidar*. The following passage may be quoted from the judgment:—"It is clear from a ruling of this Court in the case of *Ambika Pershad v. Chowdhry Keshri Sahai* (2), that such a suit is not maintainable under the provisions of the Bengal Tenancy Act. The question then arises whether it is maintainable under the provisions of the Patni Regulation (VIII of 1819) or of any other Statute. On the whole, we are of opinion that it is not. There is no section in Regulation VIII of 1819 expressly giving a *se-patnidar* a right to compel his superior talukdar to register his name or a right of suit in case of his refusal to do so. We do not think that sections 5 and 6 of that Regulation give the plaintiff any such right, the word *patnidar* in these sections, in our opinion, not including a *se-patnidar* and the words 'other superior' not being applicable to a *dar-patnidar*. Under the former rent law, a *se-patnidar* or other dependent talukdar had a right to compel his superior to register his name in his *sherista* under section 27 of Act X of 1859 and section 26 of Act VIII (B.C.) of 1868, but not under the Patni Regulation. Under the former Act, the dependent talukdar could apply to the Collector in case of the superior tenant's refusal to register his name, under the latter Act, it would appear he might bring a suit in the Civil Court. However this may be, both these Acts have now been repealed in Bengal, and therefore it appears to us that the plaintiff has now no right to bring such a suit as the present, and as he cannot bring such a suit under the provisions of the Bengal Tenancy Act, this appeal must be decreed and the suit dismissed on this ground. It was no doubt open to the plaintiff to sue for a

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declaration of his right as the defendant's tenant, but he has not framed his suit in this way."

The provisions of the Bengal Tenancy Act, which are referred to in the former of these two cases as introducing a system for the official registration of permanent tenures, are contained in sections 12 to 18, and it is doubtful whether these provisions were intended so much for the benefit of the superior landlord as for the protection of the tenants under the tenure-holder. Section 16, for instance, provides that a person becoming entitled to a permanent tenure by succession shall not be entitled to recover, by suit, d restraint or other proceedings, any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

In the present case the learned Additional District Judge has expressly and, we think, wrongly refrained from considering the question whether the recorded tenant represented the holding in dispute. He is also, we think, mistaken in saying that the case of *Rajani Kant Guho v. Uzir Bibi* (1), "enunciates the principle that the landlord is not bound to look beyond his record." The question under the present law is always one of fact, whether the recorded tenant represents the holding or not.

In the view we take, the decree of the Additional District Judge must be set aside, and the case remanded to him for the purpose of being re-heard with reference to the observations which we have made.

Costs will abide the result.

*Appeal allowed ;
 case remanded.*

S. C. G.