

Mohammad Hossain Vs. Bepin Behari Ghanti and ors.

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Court : Kolkata

Decided On : Jan-04-1954

Reported in : AIR1954Cal247

Judge : G.N. Das, J.

Acts : Tenancy Law; ;Bengal Tenancy Act, 1885 - Section 178(3)

Appeal No. : A.F.A.D. No. 302 of 1949

Appellant : Mohammad Hossain;bepin Behari Ghanti and ors.

Respondent : Bepin Behari Ghanti and ors.;mohammad Hossain

Advocate for Pet/Ap. : Sudhir Kumar Acharjee and ;Dhires Chandra Chakravarty, Advs.

Disposition : Appeal partly allowed

Judgement :

G.N. Das, J.

1. This appeal is at the instance of the defendant. It arises out of a suit for recovery of khas possession and for recovery of arrears of rents and mesne profits. The plaintiffs' case is that the disputed property measuring about 2 1/2 bighas was in the khas possession of the lessor Tarini Charan Ghanti, the predecessor-in-interest of the plaintiffs, that Tarini Charan Ghanti settled the land with the defendant for using it as a garden and that it was agreed between the parties that the defendant (the lessee) would vacate the land on receipt of two years' notice after Tarini's death, if Tarini's heirs had necessity for electing the tenant. Tarini died in Jaishia 1342 B. S. and the plaintiffs who are Tarini's heirs served a notice to quit on the defendant, on 12-1-1937, requiring the defendant to vacate the land on the expiry of the month of Chaitra 1345 B. S. As the defendant did not comply, the plaintiffs brought the present suit on the 25-11-1940.

2. The main plea on behalf of the defendant is that he is a raiyat with a right of occupancy and he is not, therefore, ejectable on service of a notice to quit, the provision in the lease being hit by Section 178(3), Bengal Tenancy Act, that the defendant erected pucca structures with the knowledge and consent of Tarini Charan Ghanti at a considerable expense and that accordingly the plaintiffs cannot eject the defendant and that the latter is in any event entitled, to compensation.

3. The suit has a chequered career. The suit was decreed by the learned. Munsif on

19-2-1941. The defendant took an appeal. The lower appellate Court modified the judgment of the trial Court. The plaintiffs preferred a second appeal to this Court; the defendant filed a cross-objection. The second appeal was heard by myself and by a judgment dated 14-5-1947 the appeal and the cross-objection filed by the defendant were allowed, the judgments and decrees of the Courts below were set aside and the case remitted to the trial Court for a decision of the suit on the evidence already on record and on fresh evidence which the parties might choose to adduce.

4. The main question which was canvassed in the Courts below after remand and has been re-agitated before me is whether the defendant acquired a right of occupancy in the disputed land by virtue of Section 178(3), Bengal Tenancy Act. It was not disputed that the defendant is a raiyat and that the defendant has been in occupation for more than 12 years. Under Section 178(3), Bengal Tenancy Act the defendant would thus acquire an occupancy right in the land in accordance with the provisions contained in the Bengal Tenancy Act. It was contended, however, on behalf of the plaintiffs that Section 178(3), Bengal Tenancy Act would not be attracted because of proviso (iii) to the said Section 178(3). That proviso runs as follows :

'Nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land. with agricultural crops.'

There is an Explanation appended to this proviso which defines the expression 'horticultural land'.

5. At the hearing before me, before remand the parties were in difference as to whether the disputed land was horticultural land within the meaning of that expression in Explanation to proviso (iii) to Section 178(3). The Courts below after remand have concurrently held that the disputed land is horticultural land. Mr. Acharjee who appears in support of the appeal has not contested the propriety of this finding. I must, therefore, proceed on the assumption that the disputed land is horticultural land. The contest before me centres round the interpretation to be put upon Section 178(3), proviso (iii), the contest being whether the lease with which we are concerned evidenced a contract for the temporary cultivation of horticultural land with agricultural crops. The Courts below have concurred in holding that the lease comes within proviso (iii) and evidences a contract for temporary cultivation of horticultural land. The learned Judge in the lower appellate Court has given three reasons for the view taken by him, the first reason is that the lessee was enjoined by the lease not to cut down trees already existing on the land and such fruit trees as the lessee might plant on the land. (2) The lessor agreed not to eject the lessee during the lessor's life time and for two years thereafter. (3) The temporary character of the lease is itself some evidence to show that the contract for cultivation embodied in the lease was a contract for temporary cultivation of the land.

6. The learned Judge in the lower appellate Court accepted as sound the contention raised on behalf of the defendant appellant that a temporary lease is not the same thing as the contract for the temporary cultivation of horticultural or orchard land with agricultural crops such as is contemplated in Section 178(3), proviso (iii) of the Bengal Tenancy Act.

7. In my opinion the learned Judge in the lower appellate Court has not properly appreciated the import of the lease as also the true effect of Section 178(3), proviso (iii). The lease in this case on a true construction cannot be regarded as a lease for

the temporary cultivation of horticultural land with agricultural crops. Section 178(3), proviso (iii) was intended to safeguard the rights of a landlord holding horticultural or orchard land, the intention being that a contract for the temporary cultivation of such land with agricultural crops would not entitle the lessee to acquire occupancy rights in terms of Section 178(3) of the Act. In this case a perusal of the lease leaves no doubt in my mind that the intention of the lessor was to permit the lessee to convert the disputed land into an agricultural site. I may refer to certain relevant portions of the lease. The lease is stated to be one for cultivation and residence. It is a 'bemeadi' lease, i.e., a lease for an indefinite period. Clause (1) of the lease entitles the lessee to cultivate the disputed premises and to reside therein. Then Clause (2) provides for payment of rent in four kists, Asar, Aswin, Pous and Chaitra. Clause (3) enjoins the lessee not to render the land unfit for cultivation for agricultural purposes and provides further that if the lessee renders the land unfit for such cultivation he would be liable to pay compensation. Clause (4) provides that the lessee will enjoy the fruits on the trees existing on the land and would also enjoy the fruits of any tree which might be planted there, and contains a provision against cutting down such trees without the consent of the landlord. The clause also entitles the lessee to grow fishes in a 'doba' (small tank) in the land. Clause (5) entitles the lessor to increase the rent in accordance with law. Clause (6) is not material for our purpose. Clause (7) provides that the lessor will not be entitled to eject the lessee but that the lessor's heirs will, if they so require, eject the lessee by giving him two year's notice. The lease concludes by saying that the lease is a raiyati lease for cultivation and residence.

8. In my opinion the main purpose for which the lease was granted is to entitle the lessee to cultivate the land. Clause (3) to which I have referred clearly indicates that the demised premises should not be rendered unfit for cultivation. The intention, therefore, was not to preserve the leasehold premises merely as horticultural land.

9. In my opinion the lease cannot also be regarded as a lease for temporary cultivation. As I have already observed the lessee had an undoubted right to remain in possession for the life time of the lessor and for two years thereafter. The expression 'contract for the temporary cultivation of horticultural or orchard land' in my opinion refers to those cases where a horticultural site is made over to a person for temporary cultivation with agricultural crops and in such a contingency the legislature intended that the lessee will not by reason of such occupation acquire an occupancy right in terms of Section 178(3), proviso (iii). The intention was to safeguard the rights of a lessor in cases where for instance a settled raiyat takes a contract for the temporary cultivation of horticultural land with agricultural crops.

I do not think the relevant enquiry in such a case is whether the lease is a permanent one or not as was held by the learned Subordinate Judge. The mere fact that the lease is non-permanent does not necessarily show that the proviso would not be attracted. I have looked into the evidence and it is impossible to say from that evidence that the site itself was largely covered with trees and that the purpose of the lease was mainly to entitle the lessee to plant trees and to carry on agricultural operations as a subsidiary purpose. A true construction of the lease leads me to hold that the lessor intended that the existing trees would be preserved but that the lessee would carry on cultivation in such portions of the demised premises as were capable of such enjoyment. I, therefore, disagree with the view taken by the courts below as to the applicability of proviso (iii) to Section 178(3), Bengal Tenancy Act.

10. The result, therefore, is that the defendant acquired a right of occupancy and is

protected from eviction. The decree in so far as it entitles the plaintiff to recover khas possession and to get mesne profits must, therefore, be vacated. The decree for arrears of rent would, however, be maintained.

11. There remains the question as regards costs. The direction as to costs which was made by this Court by its order dated 14-5-1947 is as follows: 'There will be no order for costs in this appeal and the cross-objection. Further costs will abide the result'. In accordance with this direction the defendant-appellant will be entitled to his costs of the hearing of the suit and the appeal after remand and of this Court.

12. The appeal is allowed in part. The judgments and decrees of the courts below stand modified as directed above.

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