Golam Rahman Mistri and ors. Vs. Gurdas Kundu Choudhri and ors.

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Court : Kolkata

Decided On : Jun-01-1922

Reported in : AIR1923Cal505,76Ind.Cas.586

Judge : Asutosh Mookerjee and ;Chotzner, JJ.

Appellant : Golam Rahman Mistri and ors.

Respondent : Gurdas Kundu Choudhri and ors.

Judgement :

1. This is an appeal by the defendants in a suit in ejectment. The case for the plaintiffs is that the defendants are purchasers of a non-transferable tenancy, and are, consequently, in occupation as trespassers. The defendants resist the claim on the ground that the tenancy is transferable. The Court of first instance came to the conclusion that the tenancy constituted a transferable tenure and in this view dismissed the suit. Upon appeal, the Subordinate Judge held that the tenancy was not a tenure but an agricultural holding and must accordingly be deemed to be non-transferable. In this view, the Subordinate Judge has decreed the suit. On the present appeal, we have been invited to consider the terms of the lease granted by the landlords to the tenant on the 21st January, 1910.

2. The tenancy was in respect of an area of 9 bighas 7 3/4 cottahs of land. Consequently, the presumption applicable to tenancies in respect of an area exceeding 100 bighas is not applicable. The lease authorises the tenant to enjoy the land either by cultivating it himself or by letting it out to tenants. From this it is impossible to conclude with certainty that the tenancy was intended to be a tenure rather than a raiyati holding. We, therefore, proceed on the assumption that the tenancy was a raiyati holding. The case for the plaintiffs is that the holding which was created by this document was an ordinary non-transferable occupancy holding. The case for the defendant is that the tenancy which was intended to be created was that of a raiyat at a fixed rate. It is plain that the tenancy was not intended to be that of an ordinary occupancy raiyat. If that had been the intention, there would have been a suitable indication in the document. For instance, the tenant would have been described as a raiyat with a right of occupancy. On the other hand, we find that, at the very commencement of the lease, the document is described as a kabuliyat in respect of 9 bighas 7 3/4 kotthas of land at an annua jama of Rs. 21-13-16 3/4 gunda with right of possession in succession to sons, grandson, &c.; The use of the words pupa patradi krame indicated that this was intended to be a perpetual lease. There is no controversy that that is the significance of this expression. (See the cases of Kartic Mandal v. Bama Charan Mandal 29 Ind. Cas. 502 : 20 C.W.N. 182 and Ram Sharan Lal v. Ram Narain Singh 28 Ind. Cas. 610 : 42 C. 305 : 19 C.W.N. 466. When we examine the terms in the body of the document, we find in one place an undertaking by the

tenant to pay the 'Nirdharita Jama' fixed rent, arid in an another portion we find that the tenant undertakes to pay in addition to the 'Dharya Jama' fixed rent, certain sums which we shall presently mention. The derivative meaning of expressions like Dharya and Nirdharita is 'fixed' Dwarika Nath Mukerjee v. Dwijendra Nath Ghosal 53 Ind. Cas. 103 : 30 C.L.J. 37 : 47 C. 139n, Asutosh Mukhopadhya v. Haran Chandra Mukherjce 53 Ind. Cas. 382 : 30 C.L.J. 41 : 23 C.W.N. 1021 : 47 C. 133. There is, therefore, pima facie statement in the lease to the effect that the rent mentioned, namely, Rs. 21-13-16 3/4 gundas, is a fixed rent. This fits in with what follows. There is a covenant by the tenant to pay the landlords, in addition 10 the fixed rent, Road Cess and Pubic Works Cess, as now assessed, and any tax or additional amount that may be assessed or settled by Government in future in respect of lands of the tenancy. There would have been no occasion for such a statement, if the rent had been intended to be variable This clause is followed by a very important covenant to the following effect:--'That when the aforesaid village is measured and jamabandi prepared, I shall he present before the amin when required, and shall cause the measurement and bring enhancement of rent into effect.' The expression used in Nirikha which signifies the standard rate at which the lands of the village or district are assessed. The clause in question indicates that if excess lands Were discovered on measurement, such excess lands would be assessed at the standard rate at which the lands of the village were assessed. This would be so, only if the rent previously mentioned was fixed in respect of the area specified. On a construction then of the clauses enumerated, it is plain that this tenancy was intended to be a lease at a fixed rent.

3. But We have been pressed to take a contrary view as there are restrictive clauses to the following effect, viz: The tenant undertakes 'not to excavate any ditch or tank, prepare bricks, construct pucca buildings, and cut down trees without taking a written order expressing consent from the landlord.' These are restrictions which may or may not be consistent with the nature of the interest created by the lease. This much is plain that the landlord intended to reserve to himself certain rights, though he did not take the precaution of inserting a clause tor re-entry upon breach of the covenant. Some of these restrictions might have been inserted with a view to avoid possible disputes. For instance, there may be a question whether, even in the case of an occupancy raiyat, restrictions as to the erection of a building or excavation of a tank can effect his status. In any event, we are not prepared to hold that the restrictive clauses modified the nature of the tenancy. We hold accordingly that this was intended to be a perpetual lease at a fixed rent, so that, under Section 18 of the Bengal Tenancy Act, the defendant is not liable to ejectment.

4. The result is that this appeal is allowed, the decree of the Court below set aside and the suit dismissed with costs in all the Courts.