Nawab of Murshidabad Vs. Bilas Roy Choudhuri

LegalCrystal Citation : legalcrystal.com/880619

Court : Kolkata

Decided On : Jul-02-1928

Reported in : AIR1929Cal433,118Ind.Cas.561

Appellant : Nawab of Murshidabad

Respondent : Bilas Roy Choudhuri

Judgement :

Page, J.

1. This case involves the construction of the Murshidabad Act (15 of 1891). On 25th July 1920, the Nawab Bahadur of Murshidabad and his eldest son, defendant 3, executed an indenture, whereby the Nawab let to defendants 1 and 2 certain lands and premises to which the Murshidabad Act applied for a term of 21 years in consideration of:

the sum of rupees five laces as advance of the total rent payable for and during the said term of 21 years, the annual rent being one equal 21 part of the said total rent, and the said lessees do hereby covenant with the said lesser in manner following (that is to say) that the said lessees shall pay to the said lesser at or immediately before the execution of those presents the said sum of rupees finales as advance of the total rent payable during the said term of 21 years.

2. In the same indenture defendant 3 covenanted with the lessees that in the event of his succeeding to the estate within the period of the term he would allow the lessees to continue in occupation of the demised property 'without paying any rent therefor pursuant to the terms of this lease.' An acknowledgment of the payment of the five lacs was endorsed upon the indenture by the Nawab. Thereafter defendants 1 and 2 went into, and at all material times have remained in, possession of the demised property. The present suit has been brought by the Nawab to recover possession of the demised property and mesne profits, upon the ground that the indenture of lease of 25th July 1920 is null and void by reason of the provisions of condition (1) of the Murshidabad Act. Condition (1) is to the following effect:

The said Nawab Bahadur shall not nor shall any of his successors in the said titles sell mortgage devise or alienate the said properties respectively or any of them otherwise than by lease or demise for a term not exceeding 21 years, and under a rent without bonus or selami.

3. Three issues fall for determination:

(1) Is the lease in suit a 'lease or demise for a term not exceeding 21 years and under

a rent without bonus or selami' within condition (1) of the Murshidabad Act ?

(2) If nay, is the lease void, or voidable only at the instance of the Secretary of State for India ?

(3) If the lease is void, is the Nawab estopped from denying its validity ?

4. In my opinion the terms of the lease in suit plainly contravene condition (1) of the Act. The intention of the legislature in passing the Murshidabad Act was to provide 'for the maintenance of the position and dignity' of the Nawab Bahadur of Murshidabad for the time being, and the Act was enacted to prevent any Nawab in the future from squandering his possessions, and thereby becoming unable to meet the current expenditure necessary for his maintenance as 'the premier noble of Bengal.' The legislature, in order to give effect to its intention, provided that the rent reserved under any lease granted in future by the Nawab for the time being should be payable periodically, and, in my opinion, condition (1) was inserted for the very purpose of meeting such an evasion of the Act as that which has been attempted in the present ease.

5. Under Section 105, T.P. Act (4 of 1882), a lease of immovable property is defined as:

a transfer of a right to enjoy such property made for a certain time expressed, or implied, or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions to the transferred by the transferee, who accepts the transfer on such terms.

6. In the section:

the price is called the premium, and the money, share, service, or other thing to be so rendered is called the rent.

7. I have no doubt that the five laces which the lessees agreed to pay to the lesser under the indenture of 25th July 1920 was a premium or salami and not rent, notwithstanding that it is stated therein to be an 'advance of the total rent payable.' In my opinion, the terms of this lease clearly offended against the provisions of condition (1), for:

The principle, as I understand it, is that whenever it can be shown that the acts of the parties are adopted for the purpose of effecting a thing which is prohibited, and the thing prohibited is in consequence effected, the parties have done that which they have purposely caused, though they may have done it indirectly, and endeavored to conceal that they have donor so' par Blackburn, J., in Jeffries v. Alexander [1860] 8 H.L.C. 594.

8. Suppose a Nawab, having sold all the free property of which he was possessed and, having dissipated the purchase moneys, proceeded to grant leases for 21 years of the residue of his property that was subject to the Murshidabad Act, for a lump sum or sums to be paid as a present advance of future rent. Now, if the Nawab, having squandered the sums advanced, happened to die shortly after the leases had been executed, the very object which the legislature had in view when enacting the

Murshidabad Act would be frustrated ; for the succeeding Nawab, so long as the leases subsisted, would be penniless, and the premier Noble of Bengal would have no means of livelihood, and would be unable to maintain himself in a manner befitting his position and dignity. The legislature, conceiving that it would be against public policy in a country like India that the premier Noble of the Province of Bengal should be reduced to a condition so parlous and undignified, by enacting the Murshidabad Act, endeavoured to prevent the creation of such a situation, and to protect the Nawabs against the risks of improvidence. The object and effect of the indenture in suit being to evade the provisions of the Act in my opinion, the lease of 25th July 1920 offends against both the spirit of the Act and the provisions of condition (1) and is prohibited.

9. As to the second issue that has been raised I am clearly of opinion that the provisions under which the Secretary of State for India in certain events becomes entitled to retake possession of the properties to which the Act applies do not, and do not purport to, invest the Secretary of State with the power to affirm or avoid any transaction that contravenes the terms of the Act, but were enacted to prevent a recurrence of such inhibited acts, or a course of wasteful extravagance by a Nawab which, if persisted in, would lead to the dissipation of the possessions of the House of Murshidabad. In my opinion, whether the lease in suit was merely voidable, or whether for all purposes it was null and void depends upon the intention of the legislature to be collected from the terms of the Act. The principles of construction which the Court must apply in order to ascertain whether this lease is void or voidable are, I think, as follows:

Where the legislature has prohibited the making of a contract, and has expressly provided or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be for all purposes void such contract is utterly null and void.

Prohibitory statutes prevent; you from doing something which formerly it was lawful for you to do. And whenever you can find that anything done is substantially that which is prohibited I think it is perfectly open to the Court to say that that is void, not because it comes within the spirit of the statute, or tends to effect the object which the statute meant to prohibit, but because by reason of the true construction of the statute, it is the thing, or one of the things, actually prohibited ; per Lord Cranworth, L.C., in Philpott v. St. George's Hospital [1857] 6 H.L.C. 338; Jagadbandhu Saha v. Radha Krishna Pal [1909] 36 Cal. 920, Abdul Aziz v. Kanthu Mallik [1910] 38 Cal. 512 ; Madras Hindu Mutual Benefit Permanent Fund v. Ragava Chetti [1895] 19 Mad. 200.

10. Where the language that has been employed does not plainly and conclusively indicate the intention of the legislature that the contract should, be void for all purposes, it would seem that if the inhibition is merely for the benefit of a particular person or persons the Court will lean to the construction that the contract is voidable at the election of the person or persons for whose benefit the inhibitory Act was enacted, provided, that such persons are sui juris, and capable of managing their affairs in a reasonable and proper manner.

11. Where, however, the person or persons [or whose benefit the inhibition was created are not deemed to be capable of conducting their affairs in a sensible and normal way, and the Act was passed for their protection, or where the contract is

prohibited not merely for the benefit or protection of individuals, but because the intention of the legislature was to forbid the making of the contract in the interest of the community generally, and as a matter of public policy, in either ease a contract that contravenes the provisions of the Act is null and void for all purposes.

It is said that ' void ' is sometimes construed ' voidable,' and where the provision is introduced for the benefit of the parties only, such a construction may be right, but where it is introduced for public purposes, and to protect those who are incapable of protecting themselves, it should receive its full force and effect; per Bayley, J. The King v. Hipswell [1828] 8 B. & C. 466.

12. Take the case of eleemosynary and ecclesiastical corporations governed by 13 Eliz., c. 10 by way of illustration. If a bishop made a lease or grant which was not warranted by this statute, it was held at one time to be neither

void nor voidable by the bishop himself who made it, but remains good against him during such time as he remains bishop. But as to the successors of the bishop, such leases or grants are void or voidable, as the case happens to be, as will appear hereafter. And the reason such leases or grants are good against the bishop himself who made them, is because they were so at the common law, and the statutes were made only for the benefit of the successors, that they should not be bound by those acts of their predecessors which might turn to their prejudice and disadvantage ; but not to give the bishop himself power to avoid or derogate from his own acts, which would be against all rules both of law and equity, and, therefore, was not within the meaning of the said statutes : Bacon's Abridgement, Vol. 4, p. 761, Coke Ltt. 45-a, Roe v. Archbishop of York [1805] 6 East. 86, per Lord Ellen-borough.

13. In Magdalen Hospital v. Knotts [1879] 4 A.C. 324, however, the House of Lords took a different view as to the validity of such leases, and it was held that leases which contravened 13 Eliz, c. 10 were ab initio null and void as being against public policy.

As to the character of the evil which it is sought by the statute to prevent it. is clear that in the case of an eleemosynary corporation, the whole property of which is devoted to charity, and where the office bearers and other members of the corporation have no personal interest whatever, the object must be to make the property of the corporation absolutely inalienable, in any way other than by the particular form of lease which is authorized....The intention is to condemn the lease as a wrong and a void thing, even though every member of the corporation should have committed himself to it, and should be anxious to maintain it : per Lord Cairns, L.C., ibid at p. 332 ; see also Bishop of Bangor v. Parry [1891] 2 Q.B. 277.

14. Now, it is obvious that the legislature thought that the Nawabs of Murshidabad were not likely to manage their affairs in a reasonable and provident way, and by enacting the Murshidabad Act was minded to protect successive Nawabs against themselves, and as a matter of public policy and concern to make provision to prevent any Nawab in future from squandering the possessions of the distinguished house of which he was the head. For these reasons it appears to me plain that the lease in suit by means of which the parties intentionally sought to evade the provisions of the Act is null and void for all purposes.

15. But it is urged that even so the Nawab is not entitled to maintain the suit, for, 'If a

man bag made a solemn deed covenanting that another shall enjoy the premises and likewise for further assurance, it shall never lie in his mouth to dispute the title of the party to whom he has so undertaken': per Lord Mansfield in Goodtitle v. Bailey [1777] 2 Couper. 597, and on behalf of the first and second defendants it is contended that the Nawab is estopped from denying the validity of the lease for he cannot derogate from his own grant. No doubt, apart from the Act that contention would be sound. But by reason of the Act the Nawab has be come pro tanto a person under disability, and both because the Act was passed on grounds of public policy and not merely for the personal benefit and protection of the Nawabs and because the Nawab is incapacitated from executing such an idenure, in my opinion, this contention cannot be sustained.

16. The claim of the Nawab to recover possession of the demised premises in no sense depends upon the void indenture of lease, for the lease, being null and void for all purposes, may be disregarded by the Nawab and every one else ; and it is not pretended that the first and second defendants were induced to take the lease by any fraud or misrepresentation on the part of the Nawab ; indeed to my mind it is clear that the lessees were content to risk the chance of the lease being held to be void in order to obtain the very substantial benefits which they thought would accrue to them through being put into possession of the demised premises. Further, in my opinion, the Nawab is in consimili casu with other persons under disability such as minors and married women in England who are restrained from anticipation : Bateman (Lady) v. Faber [1898] 1 Ch. 144, R. Leslie v. Sheill [1914] 3 K.B. 607, Thurstan v. Nottingham Permanent Benefit Building Society [1902] 1 Ch. 1,. Jagadbandhu Saha v. Radha Krishna Pal [1909] 36 Cal. 920, Mohori Bibee v. Dharamodas Ghose [1903] 30 Cal. 539, Mahomed Syedol v. Yeoh A.I.R. 1916 P.C. 242 Fuli Bibi v. Khokai Mondal : AIR1928Cal537 , Sadiq Ali Khan v. Jai Kishori A.I.R. 1928 P.C. 152. In R. Leslie v. Sheill [1914] 3 K.B. 607, Lord Sumner, as he then was, stated the reason for affording, immunity to infants, from contractual obligations to be that:

It was thought necessary to safeguard the weakness in infants at large, even though here and there a juvenile knave slipped through, supra at p. 612.

and the ground upon which I hold that the Nawab is not estopped from denying the validity of the lease in suit was explained by Channell, J., in Corporation of Canterbury v. Cooper [1908] 99 L.T. 612, where his Lordship observed that:

The reason why there can be no such estoppel is, if you were to hold that the corporation were estopped by the fact of their having granted this lease you would be giving the go by to the statute which says they shall not grant the lease when the person to whom it is granted acts upon it. If you say that is. estoppels, that estoppels is got rid of by the statute. There can be no estoppels merely by the granting of the lease or acting under it. There can be no estoppels preventing the corporation stating that the lease is not in fact valid.

17. The result is that there will be a decree for possession as prayed. The Nawab through his learned Counsel has stated that he is prepared, upon obtaining possession of the demised property, to refund to the first and second defendants such a sum as the Court deems it equitable that he should repay to the first and second defendants in respect of this transaction.

18. In my opinion it is in consonance. with equity and good sense that the Nawab

should repay to the first and second defendants the money that he actually has received as consideration for the lease, and the Nawab consents to a personal decree being passed against him for five lacs of rupees. But I do not think that the Nawab should be awarded any sum for mesne profits, or that the lessees should receive interest on the moneys advanced. The parties to the lease deliberately attempted to evade the provisions of the Act, and while the Nawab was content to forgo the profits accruing from the demised property in consideration of a present advance of five lacs, the lessees on their part were prepared to pay five lacs and to give up the interest that would accrue there from in return for the opportunity of collecting the rents of the demised property. It may be that the lessees have incurred expenditure on the property but they must be content with the fruits that they have been able to garner from the demised property while it was in their possession. In the circumstances I make no order as to costs.