

Sriram Chandra (Ram Chandra in Vakalutnamah) Sutradhar and anr. Vs. Dharamdhar Ghose and ors.

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Court : Kolkata

Decided On : Dec-09-1919

Reported in : 55Ind.Cas.463

Judge : Ernest Fletcher, J.

Appellant : Sriram Chandra (Ram Chandra in Vakalutnamah) Sutradhar and anr.

Respondent : Dharamdhar Ghose and ors.

Judgement :

Ernest Fletcher, J.

1. This is an appeal brought by the defendants Nos. 1 and 2 against the decision of the learned Subordinate Judge of Bankura, dated the 6th January 1919, affirming the decision of the Munsif of the same place. The suit was brought to recover possession of certain land within the limits of the town of Bankura. It appears from the facts found that one Dwarka Math Roy admittedly had a mokerari interest in the land in question. It was set up by the plaintiff and denied by the defendants that another interest had been created, namely, a dar mokerari interest in favour of one Hari Narain and Hari Narain's connection with the land was further evidenced, it was stated, by the fact that he kept a woman who lived on the land in dispute. However, the Court found that it was no satisfactory evidence, as to the creation of the dar mokerari interest in favour of Hari Narain. We have got to take that finding with the, other findings made in the judgment. I take it that what the learned Judge meant, thereby was that the creation of this darmokerari interest of Hari Narain had not been strictly proved. One Ram Das Chakravarti subsequently took a verbal settlement from Hari Narain of the land in dispute and this person Ram Das, after the death of Hari Narain, purchased from Hari Narain's daughter's son, who was the heir of Hari Narain, the interest which Hari Narain had in the land. That interest became vested in a charitable society by a gift from Ram Das and the plaintiff derived his title from the person representing this charitable society. On the other hand, in the year 1909 the defendants got a grant of the lands from Dwarka Nath Roy, who admittedly had a mokerari interest in the property, and now the plaintiff brings the present suit to recover possession of this land. There was a certain criminal proceeding brought by Ram Das against the father of the defendants and a compromise was entered into in those proceedings, and one of the terms of the compromise was that the defendants' father recognized and admitted that Ram Dae was entitled to the portion of the property now sued for. It was found by the learned Judge of the lower Appellate Court that the lease granted by Dwarka Nath Roy was to ignore the dar-mokerari right of Hari Narain. The learned Judge obviously meant that it was a fraudulent document granted by Dwarka Nath Roy to get rid of the subsisting interest then outstanding in

the property in favour of Hari Narain. The learned Judge also found that Ram Das, at the time of the grant of this lease in favour, of the father of the defendants, was in actual possession of the land and it was quite obvious, if that is so, that the defendants' father took with full notice of the right of Ram Das. It was also found that, after this admission and recognition in the solenama entered into in the criminal case, the land had been held and enjoyed by the two parties in accordance with the terms of the solenama. The learned Judge, therefore, held that the plaintiff's interest had been sufficiently established, at any rate, as against the: persons claiming through the father of the defendants, as of coarse the present defendants do. I think the decision of the learned Judge is right. This is a case where there appears to have been an interest of some sort outstanding in Hari Narain's favour. The nature of that interest was not strictly proved before the Judge. But there was in this criminal case this recognition of the interest of Hari Narain and the defendants cannot set up this fraudulent patta, Exhibit A, against the interest in this land which was admitted by their father and recognized in this solenama entered into between the parties. I Bee no reason to disturb the conclusion arrived at by the learned Judge of the lower Appellate Court. The present appeal, therefore, fails and must be dismissed , with costs.

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