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Aimanaddi Patari Vs. NabIn Chandra Gope and ors.

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Court : Kolkata

Decided On : Oct-10-1909

Reported in : 5Ind.Cas.307

Judge : Chitty and ;Richardson, JJ.

Appellant : Aimanaddi Patari

Respondent : NabIn Chandra Gope and ors.

Judgement :

Nos. 36 AND 150.

1. These two appeals are preferred by the plaintiff in suits for rent filed by her against the defendant based on two qabuliats executed by him in her favour on 3rd Bhadra 1299 (1892). Under these qabuliats the defendant agreed to become tenant of the plaintiff as darpatnidar and nimhowladar respectively of the lands in Kismat Daychora held by the plaintiff under the maliks of mudafat Keval Ram. The contentions of the defendant were:

(1) that the relationship of landlord and tenant had ceased between the plaintiff and himself and that he was no longer bound to pay the rent reserved by the kabuliat, and

(2) that he had in fact paid the rent up to the end of the third quarter of 1311.

2. The Courts below have agreed in dismissing the plaintiff's suits and the plaintiff has appealed.

3. The facts which are undisputed are as follows: The parent estate Taluk Kalika Prosad had been for very many years past held by the co-sharers in separate portions. Whether there was any regular partition or whether it was a mere matter of arrangement does not appear. The Taluk Kalika Prosad was thus divided into three equal shares, mudafat Kali Kanta, mudafat Jagat Chandra and mudafat Keval Ram. We are only concerned with the last named mudfat Keval Ram, in which the co-sharers were Kalitara Chowdhurani one half, Kailash Chandra one-third and Brojo Lal one-sixth. From these co-sharers the plaintiff or her predecessors-in-title obtained leases of their respective shares. The leases under which the plaintiff holds are a howla potta dated 12th Falgoon 1281 (1875) of Brojo Lal's one-sixth, a howla, potta dated 18th Baisakh 1284 (1877) of Kailash's one-third, and a putni talukdari potta dated 25th Pous 1285 (1879) of Kalitara Chowdhurani's one-half. Thus plaintiff has putni rights as regards one-half and howla rights as regards the other. Under her the defendant became darptanidar and nimhowladar by the qabuliats above mentioned in respect of the lands comprised in them and now the subject of these suits.

4. In 1905 a partition was effected of the parent estate Taluk Kalika Prosad by the Collector under the provisions of the Estates Partition Act (V of 1897 B.C.) and the lands in suit Kismat Daychora were allotted to the co-sharers or some of them who had previously held mudafats Kali Kanta and Jagat Chandra, but who had not held any portion of mudafat Keval Ram. It was argued for the defendant that by reason of such partition the title of the plaintiff under her leases above mentioned had in some way determined. It was not explained how this could be the case. The plaintiff was no party to the butwara proceedings and could not be bound by them. It was also conceded that the co-sharers to whom the lands in suit were allotted had as yet taken no steps against the plaintiff or the defendant as her tenant to disturb the defendant's possession or dispute the plaintiff's title. Under these circumstances it is obvious that the defendant cannot set up the butwara proceedings or anything that was done in them as an excuse for the non-payment of his rent to the plaintiff under the qabuliats. The Subordinate Judge has fallen into an error. He appears to think that the plaintiff was only entitled to 2/3rds of mudafat Keval Ram under the leases to her or to her husband. This, as we have shown, is erroneous and contrary to the admitted facts. The plaintiff is entitled in putni or howla right to the whole mudafat. The Subordinate Judge proceeding on this erroneous assumption has held that Section 99 of the Estates Partition Act applies to the case. It clearly cannot apply. Nor are we concerned with the right of some of the co-sharers to demand a partition of the parent estate, or the bearing of Section 7 of the Act upon the proceedings. The title of the plaintiff is so far unaffected by them, and she has a perfect right as against the defendant to recover rent for the lands of which she gave him possession, and of which he still holds possession under the leases which she granted. The case of Hridoy Nath Shaha v. Mohobutnessa Bibee 20 C. 285, is distinctly in paint, and supports the opinion which we have above expressed. It has been found that the defendant has in fact paid the rent up to the end of the third quarter of 1311 and that finding we must accept in second appeal.

5. It was suggested that the co-sharers to whom these lands have now been allotted were necessary parties to these suits. We cannot see that, that is the case. It certainly was not incumbent on the plaintiff, who in these suits claims no manner of relief against them, to bring them, upon the record. The matter at issue is entirely between the plaintiff and the defendant.

6. We think that the decision of the Courts below is erroneous. The appeals must be allowed and decrees passed in favour of the plaintiff for the rent for the last quarter of the year 1311 and the whole of the year 1312 with proportionate costs in all the Courts with interest on the decrees at 6 per cent, per annum until payment.

No. 149.

7. The questions arising in this appeal are the same as in Appeals Nos. 36 and 150 of 1908 of which we have just disposed. The judgment in those appeals applies mutatis mutandis to this appeal. This appeal is allowed and a decree passed in favour of the plaintiff for the rent for the last quarter of the year 1311 and the whole of the year 1312 with proportionate costs in all the Courts and interest on the decree at 6 percent, per annum until payment.

Nos. 35, 147 AND 148.

8. The questions in these appeals are the same as in the other Appeals Nos. 36, 149

and 150 of 1908 but owing to the amounts at stake being less it is conceded that no second appeal lies. They are accordingly dismissed but without costs.

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