

PRIVY COUNCIL

K.C. Mukerjee, Official Receiver

Vs.

Mt. Ramratan Kuer

P.C.A.No.68 of 1934

(Lord Thankerton, J. Sir John Wallis and Sir George Rankin JJ.)

12.11.1935

JUDGMENT

SIR GEORGE RANKIN J.

1. This appeal has been heard *ex parte* there being no appearance on behalf of any respondent. Their Lordships are much indebted to Mr. De Gruyther for the care and candour with which he has explained the considerations arising upon the appeal.
2. The suit was brought on 30th June 1927, by the Official Receiver of the High Court at Calcutta who represents the landlord's interest in a village called Majhauri. Defendant 1 Mt. Ramratan Kuer was sued on the footing that she had taken a transfer of a non-transferable occupancy holding in this village by deed dated 28th September 1916. The case made against her was that the transfer of the holding attracted certain principles of law laid down in the well known case of *Dayamoyi v. Ananda Mohan Roy*, and that the landlord was entitled to re-enter upon the holding as upon an abandonment by the tenant. The deed of 28th September 1916, purported to be a relinquishment by one Ram Kishen and the heirs of one Ganpat of the tenancy right including the right of occupancy to defendant 1 who was the widow of Bansidhari Singh. The purport of the deed was that Ram Kishen and Ganpat had become entitled to the tenancy right as benamidars for defendant 1 and not otherwise. The plaintiff's case on the other hand was that defendant 1 had, prior to the deed, no interest in the tenancy, and that the deed accordingly was in reality a transfer of a non-transferable occupancy holding. The Subordinate Judge accepted the plaintiff's case and made a decree ejecting defendant 1. On appeal to the High Court at Patna, however the learned Judges were of opinion that since the date of the deed in question the plaintiff or his predecessors had recognised the right of the transferee and could not now

impugn the transfer. This question depends upon the effect to be given in law to certain rent receipts. The case which the appellant desired to submit to the Board in this appeal is that these rent receipts were given by the patwari and cannot be imputed to him as a recognition of the transfer even if it be held that they bound his ijaradar.

3. The decree of the Subordinate Judge was dated 20th January 1930. On appeal the High Court dismissed the suit on 27th April 1933. Pending the appeal to His Majesty in Council the legislature of Bihar and Orissa passed an Act called the Bihar Tenancy Amendment Act, 1934. The assent of the Governor-General to this Act was dated 24th November 1934, and by Section 1(2) the Act was expressed to come into force on such date as the Local Government might by notification appoint. The date fixed by the Local Government for the commencement of the operation of the Act was 10th June 1935. The first question to which their Lordships have to address themselves is the question whether this Act does not take away from the appellant the right which he is proposing to enforce by bringing this appeal to His Majesty in Council. By Section 10 of the Act certain sections are inserted into the Bengal Tenancy Act of 1885 so far as regards its application to Bihar and Orissa. By new sections numbered 26 (A) to 26 (M) provision is made whereby an occupancy-raiyat is given power to transfer his occupancy-holding. This new right is made subject to the payment of a transfer fee to the landlord, the fee being paid either to the landlord direct or to the Collector for the landlord's benefit. In addition to these provisions which are to take effect in the future, there are two Sections 26 (N) and 26 (O) expressed and intended to have retrospective action. Section 26(N) directly governs the present case and is as follows:

Every person claiming an interest as landlord in any holding or portion thereof shall be deemed to have given his consent to every transfer of such holding or portion by sale, exchange, gift or will made before the first day of January 1923, and, in the case of the transfer of a portion of a holding, to have accepted the distribution of the rent of the holding as stated in the instrument of transfer, or if there is no such instrument, as settled between the transferor and the transferee.

4. Section 26 (O) provides that in the case of a transfer made on or after the 1st day of January 1923, but before the date of the commencement of the Act, the transferee may pay to the landlord or deposit with the Collector a transferee as therein particularised, and that upon his complying with this condition the consent of every person claiming an interest as landlord in the holding, or portion transferred shall be deemed to have been given to the transfer. The Act contains no saving clause modifying the effect of Sections 26 (N) and 26 (O).

5. In these circumstances it appears to their Lordships that unless some saving can be implied as regards occupancy-holdings which at the date of the commencement of the Act are in question in a pending suit, Section 26(N) must be applied to the present case and the plaintiff's appeal must fail in limine. Their Lordships are of opinion that no such saving can be implied. Section 26(N) is not a provision to the effect that no action shall lie in certain circumstances, nor has it any reference directly to litigation. Its provision is that every person claiming an interest as a landlord shall be deemed to have given his consent to every transfer made before 1st January 1923. This is retrospective: the question is not whether general language shall be taken only in a prospective sense. The object of this section can only be to quiet titles which are more than ten years old, and to ensure that if during those ten years the transferee has not been ejected he shall have the right to remain on the land. Within this class the legislature has not thought fit to discriminate against tenants whose right is under challenge in a suit, a course which it may well have regarded as invidious or unnecessary. As substantive rights of landlords and their accrued causes of action were to be abrogated, respect for pending suits over old transfers cannot be assumed.

6. Again, if Section 26(O) be looked at, it will be seen that in the case of a transfer made after 1st January 1923, but before 10th June 1935, the provision is that the transferee may pay or deposit the landlord's transfer fee and thus perfect his title. There is no suggestion that a transferee shall be incompetent to make the payment, or that the Collector shall refuse to receive the money in any case in which the transfer is impugned in a pending suit. If the saving to be implied in favor of pending suits is to attach to all suits brought prior to the coming into force of the Act, then the interval between the passing of the Act in November 1934, and the coming into force of the Act in June 1935, gave opportunity to any landlord to bring an ejectment suit and defeat the rights conferred by Sections 26 (N) and 26 (O). In their Lordships' opinion it is reasonably plain that no such saving can be implied. On this view the present appeal fails and should be dismissed. As the respondents have not appeared there will be no order as to costs. Their Lordships will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

1915 Cal 242=27 IC 61=42 Cal 172=20 CLJ 52=18 CWN 971 (FB),

