

SUPREME COURT OF INDIA

Nirshi Dhobin

Vs.

Dr. Sudhir Kumar Mukherjee

C.A.No.955 of 1965

(R. S. Bachawat and K. S. Hegde, JJ.)

30.07.1968

JUDGEMENT

HEGDE, J.:-

1. In this case a Full Bench of the Patna High Court differing from the view taken in a series of earlier decisions of that High Court as well as the High Court of Calcutta held that the provisions of Bihar Tenancy Act (to be briefly referred to hereinafter as the Act) do not apply to a lease of a homestead though that homestead was a part of an earlier lease which was admittedly an agricultural lease and to which the provisions of the Act applied. The appellant challenges the correctness of that decision.

2. The relevant facts as found by the fact finding courts are:- One Chakrapani Singh was the lessee of a plot which consisted of agricultural lands as well as a homestead. The homestead was later separately leased to defendants 1 and 2 (appellants). Thereafter the plaintiffs purchased the rights of the main lessee and sued the appellants for possession of the homestead. The appellants resisted the suit mainly on the ground that it had not been brought in accordance with the provisions or the

Act and hence not maintainable. The contention of the plaintiffs is that the lease is invalid as it did not conform to the provisions of Section 117 of the Transfer of Property Act and therefore there are entitled to evict the appellants. The trial Court decreed the plaintiffs suit but the first Appellate Court reversed the decree of the trial Court and dismissed it. It followed the earlier rulings of the Patna High Court to the effect that if the main lease is a lease for agricultural purposes all sub-leases of portions of that leasehold should also be considered as agricultural leases despite the fact that a particular sub-lease may be that of a homestead only. The plaintiffs took the matter in second appeal to the High Court which was decided by a Full Bench which allowed the appeal as mentioned earlier.

3. Two questions that arise for decisions are (1) was the High Court right in holding that the lease in favour of the appellants is governed by Section 117 of the Transfer of Property Act and (2) whether in view of the uniform view taken in the earlier decisions during a period of nearly 55 years the High Court was justified in reopening the question.

4. Till the decision under appeal High Courts of Patna and Calcutta proceeded on the basis that if the main lease is governed by the provisions of the Act and consequently taken out of the scope of the Transfer of Property Act then it must be held that all subleases of portions of the properties included in the main lease are agricultural leases; otherwise the main lease would cease to be a purely agricultural lease as it must be held to relate to both agricultural and non-agricultural lands. We agree with the Full Bench that the ratio of these decisions is open to question. If the legal position had not been firmly settled by a long chain of decisions commencing from 1903 onwards, it is likely that we would have concurred with the view taken by the Full Bench. But if we do so we would be unsettling a settled view of the law on the basis of which various rights must have been created, transactions entered into and titles founded. The rule laid down in the earlier decision was never departed from in the past. The Act was amended a number of times but yet the legislature did not think it necessary to alter or modify the said rule. Different considerations would have arisen if the disputed interpretation related to a penal provision or the same is detrimental to public interest or causes public inconvenience. Law is not always logic. It is a part of life and more so in a democratic set up. In law finality is of utmost importance. Unless so required in public interest, questions of law firmly settled by a long course of decisions should not ordinarily be disturbed and it is all the more so in the case of an interpretation affecting property rights. In the instant case, there were no compelling reasons for the High Court to depart from the rule laid down earlier. The decision of the High Court, if allowed to stand is bound to disturb numerous transactions. It is solely on that ground we propose to set aside that decision. Now we shall refer to the decided cases on the point.

5. The earliest decision on the point is Babu Ram Roy v. Mahendra Nath, (1904) 8 Cal WN 454. The material facts of that case are similar to the facts of this case. The main lease in that case, consisted of an agricultural land as well as a homestead. The homestead was separately given on sub-lease by the main lessee but no registered lease deed was taken. Subsequently the main lessee sued for possession of the homestead. It was contended on his behalf that the lease in favour of the sub-lessee being a lease of non-agricultural property the same is invalid as it was not given under a

registered lease deed and hence he was entitled to a decree directing the ejection of the defendants. The High Court rejected the plaintiffs claim holding that in order to maintain a suit for ejection a notice under Sec. 49, Cl. (6) Bengal Tenancy Act was necessary and that notice had to be served in accordance with the rules framed under that Act. No notice having been given under that provision, the suit was held to be non-maintainable by Mitra J. His view was affirmed by a Division Bench consisting of Maclean C. J. and Pargiter, J. The above decision was affirmed by another Division Bench of the Calcutta High Court in Abdul Karim v. Abdul Rahman, (1912) 15 Cal LJ 672. The same view was taken by the said High Court in Krishna Kanta Ghosh v. Jadu Kasye, 19 Cal WN 914 = (AIR 1916 Cal 32) and in Kudratulla Sarkar v. Upendra Kumar, AIR 1925 Cal 203. The decision in Arun Kumar Sinha v. Durga Charan Basu, AIR 1941 Cal 606 is of special importance. That case was decided by a Division Bench consisting of B. K. Mukherjea, J. who later became the Judge as well as the Chief Justice of this Court and Roxburgh, J. There the learned Judges doubted the correctness of the earlier decisions but yet were of the opinion that public interest required that the interpretation placed on the provision of law by a long series of consistent decisions should not be departed. This what the learned Judges observed in that case :

"But the principle was never dissented from, that in a case of this description, the question whether the tenancy is governed by the Bengal Tenancy Act or the Transfer of Property Act, would depend on the nature of the original tenancy, and not off the character of the parcel included in the sub-tenancy. The learned advocate who appears for the appellants has subjected these decisions to a good deal of criticism. Had the matter been *res integra*, we might have some hesitation in accepting the view enunciated in them. In the Bengal Tenancy Act, the raiyat is defined to be a person who acquires land primarily for purposes of cultivation; unless the letting was for purposes of agriculture the tenancy would not be governed by the Bengal Tenancy Act even if the superior interest was vested in the holding of the tenure to which the Bengal Tenancy Act was applicable. We do not think also that any real anomaly would arise if as between a raiyat and his sub-lessee the rights were governed by the Transfer of Property Act.

Mr. Das who appears for the respondents has contended that difficulties would arise in enforcing the provisions of Ch. 14 Bengal Tenancy Act. What he says is, that the purchaser of a raiyati holding has the right to annul all subtenancies which are incumbrances under Section 161, Bengal Tenancy Act; but if the raiyat has created a non- agricultural tenancy in respect of a portion of his lands for a fixed period which is governed by the Transfer of Property Act, to allow a purchaser to annul such subtenancies would be to entitle him to go against the provisions of the Transfer of Property Act. We do not think that there is any substance in this contention. It is not necessary that the incumbrances which can be annulled under Section 167, Bengal Tenancy Act must be incumbrances created under that Act. A mortgage is certainly an incumbrance which is created under the Transfer of Property Act but it can never be suggested that because it is governed by the Transfer of Property Act it cannot be annulled by a purchaser who purchased the holding at a sale in execution of a rent decree under Chap. 14, Bengal Tenancy Act.

The difficulty however is created by the way in which the expression "under raiyat" has been defined in Section 4, Bengal tenancy Act. An under-raiyat has been defined to be a tenant who holds

immediately or mediately under a raiyat. It is not stated here, as in the case of a raiyat, that he must hold also for purposes of cultivation. It may be argued that this must be the implication, for the provisions relating to under-raiyats which are contained in Chap. 7 Bengal Tenancy Act are appropriate only to this character as an agricultural tenant. It cannot be denied however that the wording of Sec. 4, clause (3) Bengal Tenancy Act is very wide, and when the word has been interpreted in one way for a period of nearly 40 years without any dissension whatever, we think that we should not be justified in upsetting the long series of decisions. It is significant to note that considerable changes have been introduced in the Bengal Tenancy Act in recent years but the Legislature which must be presumed to be aware of the law as laid down in the above mentioned decisions did not consider it necessary to make any changes in this respect."

6. It was not denied by the learned Counsel for the respondents that the principle enunciated in the above mentioned decisions was consistently followed by the Calcutta High Court even upto-date. Hence it is not necessary to refer to the other decisions of that court.

7. The Patna High Court consistently followed the decisions of the Calcutta High Court. In *Mian Ahir v. Paramhans Pathak*, AIR 1939 Pat 409 while considering a case similar to the present case, the rule laid down in *Babu Ram Roy's case* (1904) 8 Cal WN 454 was followed. So also in *Shrikishun Lal v. Harihar Sah*, AIR 1949 Pat 444. The law laid down in those decisions was accepted as correct till the decision of the Full Bench in the present case.

8. At page 154 of Craies on Statute Law (6th Edition) it is observed :

In 1958 Lord Evershed M. R. said : "There is well established authority for the view that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision." Again at page 155, it is observed :

"Earlier in *Morgan v. Crawshay*, Lord Westbury had thus stated the rule. After explaining that it was unnecessary to examine the interest of a galee in iron ore mines, because supposing it to be regarded as a tenement and not merely as an incorporeal right, I should still arrive at the conclusion that we must bow to the uniform interpretation which has been put upon the statute of Elizabeth and must not attempt to disturb the exposition it has received. If we find a uniform interpretation of a statute upon a question materially affecting property and perpetually recurring and which has been adhered to without interruption it would be impossible for us to introduce the precedent of disregarding that interpretation. Disagreeing with it would thereby be shaking rights and titles which have been founded through so many years upon the conviction that that interpretation is the legal and proper one and is one which will not be departed from. In that case the House of Lords decided that iron mines and all other mines except coal mines were, under the Statute of Elizabeth, exempt from liability to the poor rate.

The statute mentioned coal mines only, and a long course of decisions had established that the rule *expressio unius est exclusio alterius* applied to the enactment."

(that decision is reported in (1871) LR 5 HL 304).

9. In *Harding v. Howell*, (1889) 14 AC 307 Lord Fitzgerald speaking for the Privy Council while dealing with the interpretation of a provision in a statute observed :

"Their Lordships do not intend in the least to question the principle which governs the construction and effect of that statute as now long established by decided cases. It has been over and over again said that 'so many titles stand on it that it must not be shaken' and in that their Lordships concur."

10. In *Pugh v. Golden Valley Railway Co.*, (1880) 15 Ch D 330 Thesiger, L. J., observed :

"And the case is in principle a distinct authority for the proposition that in such circumstances as those which exist in the present case the diversion of a river is unjustifiable. Viewed simply as the decision of a Court of first instance, the authority of this case, notwithstanding the respect due to the Judges who decided it, is not binding upon us; but, viewed in its character and practical results, it is one of a class of decisions which acquire a weight and effect beyond that which attaches to the relative position of the Court from which they proceed. It constitutes an authority which, after it has stood for so long a period unchallenged, should not, in the interests of public convenience, and having regard to the protection of private rights, be overruled by this Court expectation very special considerations. For twelve years and upwards the case has continued unshaken by any judicial decisions or criticism as an authoritative exposition of the meaning of Section 16 of the Railways Clauses Consolidation Act, 1845 in respect of the matter here in dispute. During such period hundreds of Special Acts of Parliament have been passed sanctioning the constriction of lines of railway and the consequent interference with private rights, an incorporating for that purpose the provisions of the general Act. Promoters must have sought their powers, land owners must have regulated their course of action, and parliamentary committees must have given their sanction to the projects submitted to them upon the faith and footing of a limit to the powers sought and conceded being found in the provisions of the general Act as interpreted from time to time by judicial decisions. If so, it is to be presumed that the limit put upon the powers of a railway company in regard to the diversion of roads and rivers by the decision of the Court of Queens' Bench in *Reg v. Wycombe Railway Co.*, 1867-2 QB 310 must have exercised a material influence upon the relations of persons owning land proposed to be affected by special railway legislation and the promoters of that legislation."

11. In *Murphy v. Deichler*, (1909) AC 446 Lord Loreburn, L. C. speaking for the House of Lords

observed :

"I think this case fails within the rule that it is not necessary or advisable to disturb a fixed practice which has been long observed in regard to the disposition of property, even though it may have been disapproved at times by individual judges, where no real point of principles has been violated."

12. The Full Bench was of the view that the rule laid down in Babu Ram Roy's case, (1904) 8 Cal WN 454 and the decisions following it are clearly wrong. Hence even though that rule held the field for about 55 years, there is no justification for sustaining it. The Full Bench was of the opinion that in all cases where the norms of the statute are clear even a long and uniform course of judicial interpretation of it may be overruled if it is contrary to the meaning of the enactment. It accepted that to be the correct position in law and that rule is unqualified. In support thereof they relied on the Full Bench decision of the Allahabad High Court in Lallu Singh v. Gur Narain, AIR 1922 All 467 (FB) and the decision of the Privy Council in Tricomdas Cooverji Bhoja v. Shri Gopinath Jiu Thakur, AIR 1916 PC 182. The Full Bench decision of the Allahabad High Court relied on the Privy Council decision in Tricomdas Cooverji Bhoja's case, AIR 1916 PC 182 and the Privy Council in its turn followed the decision in Arthur John Pate v. W. C. Pate, 1915 AC 1100 = (AIR 1915 PC 127). In the Allahabad case the contention of the defendant was that under Hindu Law as settled by decisions delivery of possession was absolutely necessary for the completion of a gift. Their Lordships held at whatever might have been the strict law prior to the passing of the Transfer of Property Act, it must now be held that gift of immovable property can be validly effected by registered instruments signed either by or on behalf of the donor and attested by at least two witnesses and nothing further is necessary to effectuate the transfer. It is in that context their Lordships observed that where the terms of the statute or ordinance are clear then even long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment. In fact in that case the learned judges did not depart from the rule laid down in the earlier cases as regards the scope of Section 123 of the Transfer of Property Act They held that the earlier decisions under the Hindu Law cannot be followed in view of the change in the law effected by Section 123 of the Transfer of Property Act.

13. In Tricomdas Cooverjee's case, AIR 1916 PC 182 the Privy Council did not depart from any well established principle of law. In fact their Lordships in the course of the Judgment referred to certain conflict of decisions on the point under consideration and in that context they happened to make the observations to which we have referred while dealing with the Allahabad decision. As mentioned earlier the decision of the Privy Council which was followed by the Full Bench of the Allahabad High Court relied on the decision in 1915 AC 1100=(AIR 1915 PC 127) (Supra). That decision if we may say so with all respect explains the true, legal position. In that case while dealing with the various decisions cited before them the Lordships observed :

"With all respect to the learned judges who so read the Ordinance in 1871, their Lordships not only think that their decision was erroneous, but also that even after the interval of forty-four years it

ought to be overruled. The present is not one of those cases in which ineterate error is left undisturbed because titles and transactions have been founded on it which it would be unjust to disturb." (emphasis (here into ' ') supplied).

14. From these observations it is clear that the rule that where the terms of a statute or ordinance are clear then even a long and uniform course of Judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment is inapplicable to decisions on the basis of which titles and transactions must have been founded.

15. For the reasons mentioned hereinbefore this appeal is allowed and the suit dismissed with costs of this Court.

Appeal allowed.