SUPREME COURT OF INDIA

Radha Nath Seal

Vs.

Haripada Jana

C.A.No.1657 of 1966

(J. C. Shah and A. N. Grover, JJ.)

21.09.1970

JUDGEMENT

GROVER, J.:-

1. This is an appeal by special leave from a judgment of the Calcutta High Court. It arises out of a suit for declaration of title to property which was a tank known as Gangasagar in plot No. 4302 and for recovery of its possession together with mesne profits.

2. Kshirode Charan Duley and his brothers who were represented in the suit by defendants 4 to 6 were the original tenants of the property. The plaintiff claimed that he had purchased the right, title and interest of the original tenants, namely, the Duleys by a kubala for a consideration of Rs. l800/- in the year 1955. It appears that the owner of the property served a notice on the successors of Duleys to quit the same and it was alleged that they had surrendered possession to B. Sen defendant No. 3 who was trustee of Bipinbehari Sen Memorial Trust in April 1953. Thereafter B. Sen defendant No. 3 granted a settlement to the present appellant who was impleaded as defendant No. 1 in the suit. This happened in the year 1953. Certain criminal proceedings took place between the

parties under Section 145 wherein it was held that defendant No 1 was in actual possession of the property. This led to the filing of the suit by the plaintiff who claimed his right through Duleys who were the original tenants. The main defence of defendant No. 1 and defendant No. 2 his son was that the predecessors of the plaintiff had merely the jalkar right which had been validly terminated by a notice to quit with effect from the end of Chaitra 1359 B. S. The trial Court dismissed the suit and an appeal to the Subordinate Judge also failed. The High Court in second appeal decreed the suit.

3. The points which were agitated before the first appellate Court were: (1) what was the nature and purpose of the lease of the predecessors of the plaintiff. Had they merely jalkar right or right of tenancy in the suit property ? (2) Did the plaintiff acquire any right title or interest by virtue of his purchase from the pro forma defendants? The first appellate Court held that the grant was merely of tank, fisheries and not that of raiyati with a right of occupancy. The question of relinquishment of possession by the Duleys after the expiry of the lease was also considered but the finding given was that it was defendant No. 3, namely, B. Sen who was in actual possession and not the plaintiff, of the property in dispute. It is difficult to find in the judgment of the first appellate Court any clear decision on the second point relating to the acquisition by the plaintiff of any right, title and interest by virtue of purchase of rights from Duleys. The High Court considered the evidence in detail and came to the conclusion that the tenancy which subsisted between B. Sen defendant No. 3 and the Duleys was governed by the Bengal Tenancy Act, 1885, hereinafter called the "Act". It became a permanent one after 12 years from the year 1322 B. S. It was, therefore, held that the plaintiff-vendor was in possession of the disputed property as a raiyat with a right of occupancy. If that was so the tenancy could not have been terminated by means of the notice Ext. 3. The view of the Courts below that the plaintiff did not get any right, title or interest by virtue of Ext. 1 because of the termination of the tenancy by the notice Ext. 3 was found to be erroneous.

4. The learned counsel for the appellants has sought firstly, to assail the conclusion of the High Court with regard to the nature of the tenancy which subsisted between B. Sen and Duleys. It has been urged that under Section 100, Civil Procedure Code, it was not open to the High Court to interfere with questions of fact. The High Court has pointed out that certain material evidence in the shape of documents was not considered by the first appellate Court and a good deal of assumptions of fact were made. Apart from that on proved and admitted facts it was open to the High Court to find what the nature of the tenancy was.

5. It is clear from the judgment of the High Court that no attempt was made to argue that the relationship between the predecessors of the plaintiff and the landlord was governed by the provisions of any enactment which dealt with non-agricultural tenancies. Once the tenancy was governed by the Act and it became permanent under its provisions the only manner in which it could come to an end was the one provided by the Act. It has not been shown to us that the notice Ext. P. 3 which was served on the predecessors of the plaintiff was sufficient in law and complied with the provisions of the Act to bring to an end the permanent tenancy. The only argument that has been pressed on behalf of the appellants on this point is that after the notice had been served on the predecessors of the plaintiff they had surrendered their tenancy rights. This could be done under

Section 86 of the Act. The provisions of Section 86 were never pressed before the High Court. They require examination of and investigation into several other matters which it is not possible to go into at this stage. Even the question of surrender was never sought to be put into issue in the trial Court.

6. We find no merit in this appeal which is dismissed with costs.

Appeal dismissed.