Girija Prasad Paul

Vs

The Corporation of Calcutta and Others

Civil Appeal No. 1160 of 1967

(CJI S. M. Sikri, A.N. Ray, D.G. Palekar JJ)

18.08.1971

JUDGMENT

PALEKAR, J. -

1. This is an appeal by special leave against the judgment and decree of the High Court of Calcutta in Second Appeal No. 1918 of 1965 by which the appellant-plaintiff's Title Suit No. 185 of 1958 was dismissed. The suit was for a declaration that the compromise decree in Title Suit No. 78 of 1947, obtained by the Corporation of Calcutta (hereinafter referred to as "the Corporation"), defendant No. 1, against the Banerjees, who were defendants No. 2 to 5, was a fraudulent and collusive decree not binding on the plaintiff, that the plaintiff had continued to be a tenant of the suit property, and for further relief that the Corporation should be restrained permanently from executing that decree against the plaintiff. There was one more defendant to the suit, viz., Messrs. Reliance Development and Engineering Ltd., a public limited company, of which the plaintiff at all material times was the Managing Agent and Director. No relief was claimed against this Company which was defendant No. 6. The suit was dismissed by the learned Munsif at Serampore, District Hooghly, in whose Court the suit had been filed. On appeal, the learned Additional District Judge of Hooghly set aside the judgment and decree of the learned Munsif and decreed the plaintiff's suit. In Section Appeal, the High Court reversed the decreed the plaintiff's suit. In Second Appeal, the High Court reversed the decree of the learned Additional District Judge and dismissed the suit. It is against this decree that the plaintiff has come in appeal to this Court.

2. The land involved in this litigation as a portion of what is described as the Kotrung Estate. It is situated outside the limits of the Corporation and is in the Hooghly Collectorate. The area of this estate was about 105 acres and was held by the Corporation under the Crown as Lakhiraj. The entire estate was used for the manufacture of bricks and tiles and was commonly known as Kotrung Brickfield.

3. On November 1, 1926, the Corporation had leased out about 360 bighas out of this estate for a period of 10 years to one Kishori Mohan Banerjee. Kishori Mohan took possession on November 1, 1926, though the registered lease was executed on April 24, 1929. The period of the lease expired on October 31, 1936 and it is common ground that the lease was continued for a further period of 10 years, although there was no written document for it.

4. The lessee, Kishori Mohan, divided the leased land into several parcels and it appears that, while he retained with himself about 2/5th of the area leased to him, the remaining 3/5th was let out by him to several sub-lessees who, on their own, put up brick-kilns and manufactured bricks and tiles. One of such sub-lessees was Messrs. Seth Sugnichand Sundar Das & Co., to whom about 45 bighas

of land were let out by Kishori Mohan. This Company, in turn, let out this whole parcel of 45 bighas to the present plaintiff by two documents dated December 9, 1942 and January 12, 1944. It is not clear if the whole of the right of M/s. Seth Sugnichand Sundar Das & Co., under the lease obtained by it from Kishori Mohan was transferred to the plaintiff; but it is common ground that the plaintiff used to pay the rent directly to Kishori Mohan or his heirs, viz., defendants Nos. 2 to 4. The lease in favour of Kishori Mohan was terminated by the Corporation by a notice and, on September 26, 1947, the Corporation filed Title Suit No. 78 of 1947 for possession. Since the original lessee, Kishori Mohan, had died, his heirs, viz., defendants Nos. 2 to 5, the Banerjees were made defendants in that suit. During the pendency of the suit, negotiations were on foot for a compromise and, eventually, on December 12, 1949, a compromise petition was filed in that suit. Several sub-lessees were made, with their consent, parties to the suit and a decree for possession was passed not only against the Banerjees, but also the sub-lessees. The point, however, to be noted here is that, though the plaintiff was a sub-lessee, he was not made a formal party to the suit and, under the terms of the compromise, the Corporation undertook to recover possession from him under the decree.

5. In April, 1951, the Corporation filed Execution Case No. 15 of 1961 for the execution of the aforesaid decree. To this execution application, the several sub-lessees, including the present plaintiff, were made parties and, on April 26, 1951, a notice was issued to show cause why the decree should not be executed against them.

6. On receipt of this notice, the plaintiff disclaimed any interest in the property by alleging that, on October 30, 1948, he had transferred all his right, title and interest in favour of M/s. Reliance Development and Engineering Ltd. As the Managing Agent and Director of that Company, the plaintiff filed an objection-petition to the execution on May 22, 1951, and, in support of it, filed his own affidavit on June 13, 1951 in which he made the following affirmations :

> "5. That the Corporation of Calcutta served a notice dated April 25, 1946 on the heirs of late Kishori Mohan Banerjee intimating that the lease would stand terminated on the expiry of November 1, 1946.
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> 7. That the suit (Title Suit No. 78 of 1947) ended in a compromise and was decreed in terms thereof on December 12, 1949.
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> 10. That Sri G. Paul (plaintiff) transferred his interest including stock-in-trade etc., to M/s. Reliance Development and Engineering Ltd., on October 30, 1948."

This affidavit was made by the plaintiff describing himself as the Director Managing Agent for Reliance Development and Engineering Ltd.

7. Since this public limited company had not been made a party to the execution proceeding and the decree-holder Corporation had not sought recovery of possession against that Company, the objections raised on its behalf were dismissed by the Executing Court and that order was confirmed in appeal by the High Court January 29, 1952.

8. Thereafter, on July 3, 1952, the Corporation sought to execute the decree under Order 21, Rule 97

and also Rule 35 of the Code of Civil Procedure and to this application the plaintiff was made a party. It is not disputed before us that, though the plaintiff was not a party to the suit, as a sub-lessee of the Banerjees, whose tenancy had been terminated, he was liable to be evicted under the decree for possession obtained by the Corporation against the Banerjees. He, however, sought shelter behind M/s. Reliance Development and Engineering Ltd., and, making that Company his shield he tried to protect his possession; but, finally, in appeal, which was disposed of by a Division Bench of the Calcutta High Court on May 30, 1955, the application filed by the Corporation already referred to under Order 21, Rule 97 and Rule 35 was allowed. The plaintiff, through the Company, asked for a certificate of fitness for appeal to this Court, but the same was dismissed on February 21, 1958. Thereafter, the suit, viz., Title Suit No. 185 of 1958, out of which the present appeal arises, was filed by the plaintiff.

9. In this suit, the plaintiff sought an injunction against the Corporation, defendant No. 1, to permanently restrain it from executing its decree in Title Suit No. 78 of 1947 against him. To that end, he asked for two declarations, one to the effect that the compromise decree dated December 12, 1949 in Title Suit No. 78 of 1947, being fraudulent and collusive, was null and void, inoperative and not binding on the plaintiff. The second declaration he asked for was that he was the tenant of the suit property, viz., 45 bighas of land containing the brick-kilns Nos. 4 and 6. The High Court on a detailed consideration held that there was neither fraud nor collusion in obtaining the decree and it was therefore, quite operative so far as its subject-matter was concerned. Mr. Chatterjee, who appeared on behalf of the plaintiff-appellant before us, informed us that he did not want to dispute that finding. So, the only question with which we are now concerned is whether the plaintiff has been able to prove his title as a tenant and as such, under the statutes referred to hereafter, is non-ejectable.

10. In support of this plea, Mr. Chatterjee, relied upon two statutes. One is the West Bengal Non-Agricultural Tenancy Act, 1949 (West Bengal Act XX of 1949). The other is the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954). Before we turn to these statutes, we have to see what was the exact status of the plaintiff when the first of these two Acts came into force on May 5, 1949. We have already seen that the head-lease of the Banerjees had been terminated by a notice in 1946 and the suit filed for possession by the Corporation against the Banerjees had been decreed on December 12, 1949. It is not disputed before us that the tenancy had been duly terminated and, consequently, under the normal law, the plaintiff, who was merely a sub-lessee, was not entitled to resist the execution of that decree for possession. But the contention of Mr. Chatterjee is that, by virtue of certain provisions of the two statutes referred to above, he became a non-ejectable tenant and, in this connection, he referred us to certain provisions of the two Acts.

11. So far as the West Bengal Non-Agricultural Tenancy Act, 1949 is concerned, we may say at once, as pointed out by the High Court, that the plaintiff had not alleged in his plaint that a non-ejectable tenancy was granted to him, or that he had acquired a non-ejectable right of tenancy under any of the provisions of that Act. Assuming, however, that he is entitled to raise this point now, the very first difficulty which faces him is that he is not one of the persons whose rights have been protected under the Act. Mr. Chatterjee, vaguely argued that he comes under Section 7 of the Act; but, on a perusal of that section, one finds that the protections which is given by that section is to a tenant holding non-agricultural land in some specified circumstances. In the first place, therefore, he must be a non-agricultural tenant. That expression has been defined in Section 2(5) of the Act as meaning a person who holds non-agricultural land under another person and is, or but for a special contract, would be liable to pay `rent' to such person for that land. After the tenancy of the Banerjees was terminated in 1946, even the Banerjees could not have claimed to be tenants in the

sense that they were liable to pay rent to the Corporation, much less the present plaintiff who was merely a sub-lessee. Therefore, on the date of the enforcement of the Act, the plaintiff was not entitled to claim a non-agricultural tenancy and, hence, the protection given to such a tenant under Section 7 of the Act was not claimable by him. In the second place, by virtue of Section 85 of the Act, neither the Banerjees nor the sub-lessee, the plaintiff, would be entitled to claim a non-agricultural tenancy, because that section provides as follows :

> "85. Nothing in this Act shall apply to -
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> (a) any land vested in, or in the possession of -
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> #* * ** * *##
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> (iii) any local authority."

It was not seriously disputed that the land was vested in the Corporation, being a part of the grant made by the Crown to the Corporation. There can be also no question that the Corporation would be a local authority within the definition given in Section 3(23) of the Bengal General Clauses Act, 1899. It was, however, argued faintly that in the context of the Act, Section 85 could apply only to those lands vested in the Corporation within its municipal limits and not lands which are outside the limits of the Corporation. We find nothing in the Act which places any such restriction. We, therefore, agree with the finding of the High Court that the Corporation is a local authority within the meaning of Section 85(a)(iii) of the Act and that the suit land having vested in the Corporation, the Act would have no application.

12. We have then to see whether there is anything in the West Bengal Estates Acquisition Act, 1953 which gives the plaintiff protection from ejectment. We would, however, mention here that this point had not been urged before the High Court. Under Section 4(1) of that Act, the State Government is entitled, from time to time, by notification, to declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all encumbrances. It is stated that such a notification was issued some time in April, 1955. Section 5 of that Act gives the effects of such a notification, one of them being that the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all encumbrances, and every non-agricultural tenant holding land under an intermediary shall hold the same directly under the State. It is not disputed that, if the notification applied to this estate, the rights of the Corporation and of the Banerjees, whatever they were, would cease and would vest in the State. It is, therefore, claimed by Mr. Chatterjee on behalf of the State. Unfortunately, he has not made out any such case in the plaint, nor has he asked for a declaration that he is a tenant of the State, nor has he made the State Government a party to the suit. On these grounds alone, the plaintiff's contention that he was a tenant protected by this Act will have to be rejected. Assuming, however, that he can be permitted to claim to be a tenant of the State, he must, in the first instance, show that, even for the purpose of this Act, he was a non-agricultural tenant whose rights have been specifically protected under this Act. As already pointed out, since the tenancy of the Banerjees had been terminated in 1946, the plaintiff, who was a sub-lessee of the Banerjee, could not claim to be either a tenant or a sub-lessee of the Banerjees, could not to be either a tenant or a sub-tenant in the year 1955. Secondly, Section 6(1)(h) of this Act provides :

> "Notwithstanding anything contained in Sections 4 and 5, an intermediary shall,

except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting .....

where the intermediary is a local authority, - land held by such authority, notwithstanding such land or any part thereof may have been let out by such authority :

Provided that where any land which has been let out by any local authority is retained by such authority under this clause, no person holding such land shall have any right of occupancy therein, and every such person shall be bound to deliver possession of the land to the local authority when required by it for its purposes."

This provision would show that the Corporation was entitled to retain the estate, and no person, not even the Banerjees, could have any right of occupancy therein and would be bound to deliver possession of the land when required by the local authority, viz., the Corporation. The Corporation has been seeking to take possession of this land from the plaintiff right from 1951, i.e., since before the West Bengal Estates Acquisition Act, 1953 came into force and, therefore, the plaintiff can have no right to retain possession of the land even if we assume that the plaintiff was a person holding such land within the contemplation of the proviso. As a matter of fact, after the tenancy had been terminated, he had no title to `hold the land' and his mere resistance to possession from 1951 would not make him a holder of the land for the purposes of the proviso.

13. Mr. Chatterjee, however, brought to our notice that Section 6(1)(h), as it originally stood prior to its amendment in 1960, applied only to land held "in khas for public purposes" by the local authority and not to land not held in `khas' by the local authority. The original words "in khas for public purposes" were omitted from the clause as we now find it by the West Bengal Estates Acquisition (Amendment) Act, 1960 with retrospective effect, that is to say, with effect from the date of the original enactment. We must, therefore, hold that the words "in khas for public purposes" in clause (h) were not there at all at any time. No argument, therefore, can be based on the ground that the present clause (h) of sub-section (1) of Section 6 was different from the clause as it was initially enacted.

14. In the result, it is clear that both the statutes, on which the plaintiff based his right to tenancy, do not help him. It would, therefore, necessarily follow that he was liable to be evicted in execution of the decree in Title Suit No. 78 of 1947. He first resisted the decree in the name of defendant No. 6 and, after that attempt failed, he started this new litigation in 1958 keeping the Corporation out of possession for all this period. Since the plaintiff's claim on merits fails, his suit was rightly dismissed.

15. It appears that the High Court dismissed the suit also on the ground that it was barred by limitation under Article 11-A of the First Schedule to the Limitation Act, 1908. Apart from Article 11-A, one should have thought that, on the very face of it, the suit for declaration filed on November 14, 1958 was barred under Article 120 of that Act. The facts, already referred to, show that he was served with a show-cause notice through Court on April 26, 1951 why the decree should not be executed against him and, as a matter of fact, he had entered appearance on behalf of M/s. Reliance Development and Engineering Ltd., on May 19, 1951 and falsely alleged that all his interest in the sub-lease had been transferred to the Company. He had known quite well then that, whatever his rights were, he was losing them. In order to save his possession in the execution

proceedings, he put forward false objections on behalf of a third party of which he was himself the Managing Agent and Director. Therefore, the cause of action for the suit for declaration would arise in May or June, 1951 and his present suit filed in 1958 would be prima facie barred. However, it is not necessary to pursue the defence of limitation in this appeal, because it is liable to be dismissed on merits.

16. The appeal is dismissed with costs.

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