

Balai Chandra Mondal

Vs

Smt. Indurekha Debi and Others

Civil Appeal No. 1548 of 1967

(A.N. Grover, K.K. Mathew, A.K. Mukherjea JJ)

10.01.1973

JUDGMENT

MUKHERJEA, J -

1. This appeal by certificate is from a judgment and decree of the High Court at Calcutta passed in favour of the plaintiff-respondent Indurekha Debi (hereinafter referred to as Indurekha) after reversing a judgment and decree of the learned Subordinate Judge of Zillah Nadia who had dismissed the plaintiff-respondent's suit against the defendant-appellant. The short facts of the case are as follows. One Umesh Chandra Banerjee who was the father-in-law of the plaintiff-respondent held a Mokarari Mourashi Jama recorded in Khatian No. 3 of Mouza Nrisinghapur and Khatian No. 50 of Mouza Gayespur also known as Mathurapur. The jama was sold in execution of a rent decree in November, 1939 and was purchased by Indurekha in the Benami of Smarajit Kumar Bhattacharyya (hereinafter referred to simply as Smarajit). Some time in October, 1943, Smarajit executed in favour of Indurekha a deed of voluntary sale of the jama. Two years before this sale, in August, 1941, an amalnama or a deed of settlement was executed by one Anadi Charan Chakrabarti creating a raiyati interest in favour of the present appellant over 106 bighas of land at an annual rent of Rs. 145-12 as. The appellant claims that Anadi executed the deed of settlement as the authorised manager of Indurekha. Indurekha's case is, however, that neither she nor Smarajit who was her name-lender before had on any occasion permitted their manager to make a settlement and that the settlement in favour of the appellant was fraudulently created by one Annada Prasad De and Anadi Charan Chakrabarti acting in collusion with the appellant. Indurekha filed a suit on August 3, 1953, in the Court of the Subordinate Judge at Krishnagar asking for a declaration that the fictitious settlement created in favour of the appellant was void and also asking for a decree for possession of the suit property and mesne profits. The appellant contested the suit and in the written statement denied the title of Indurekha to the land in dispute.

2. According to the appellant it was Smarajit first and then Indurekha's husband Panchu Gopal who were the owners of the land in suit so that Indurekha could have no cause of action against the appellant. He further claims that after taking a settlement of the land he has been in ownership and possession of the land first under Smarajit and "at present under the plaintiff as a settled raiyat". Various issues were settled for determination by the learned subordinate judge, only two of which were raised in the appeal before this Court namely :

(1) Is the suit barred under the principles of estoppel, waiver and acquiescence ?

(2) Is the defendant No. 1 tenant regarding the suit land ?

3. The learned subordinate judge dismissed Indurekha's suit. No question of title was pressed before the learned subordinate judge who, however, came to the finding that the appellant had obtained his settlement from Anadi who was a recognised agent of Smarajit. As at the time of settlement Smarajit was admittedly the ostensible owner Smarajit would be competent to give the land to the appellant in raiyati interest and Indurekha as real owner would not be entitled to object to it. The learned subordinate judge also held that whatever Anadi did when Smarajit was the owner it was with the consent and acquiescence of both Indurekha and Smarajit. From this he came to the conclusion that since the settlement of the land with the appellant was made with the consent of both the ostensible owner as well as the real owner, Indurekha's suit must be dismissed. Accordingly, he dismissed the suit. On appeal from this judgment, however, the Calcutta High Court set aside the learned subordinate judge's order and decreed Indurekha's suit. The appellant has now come on appeal from the judgment of the High Court.

4. The decision in this case must turn round the question as to whether Anadi had any authority to settle the land with the appellant. Admittedly no written authority for giving such settlement is in existence. There have been attempts on the part of the appellant to show at the time of trial that Anadi used to collect rents and used to manage the estate of Smarajit as well as of Indurekha. Even assuming that Anadi did so and had the authority to do so, we do not see how he could dispose of the property and give a substantial area of land in raiyati settlement to the appellant. We asked the learned counsel for the appellant again and again to show us some evidence, either oral or documentary, which would show that Anadi had authority to dispose of the property of Indurekha. Learned counsel, however, failed to do so. He asked us to infer from the fact that Anadi had been in management of this land before and after the plaintiff came into possession of it that he had the necessary authority to give an Amalnama in respect of the land. We see absolutely no justification for making such an inference. It is a thoroughly well-recognised principle that where the transfer himself has no title to the property he must at least have the authority to transfer it. Under Section 7 of the Transfer of Property Act only a person authorised to dispose of transferable property not his own is competent to transfer it either wholly or in part. The learned counsel for the appellant drew our attention to the fact that the unregistered deed of Amalnama on which the appellant bases his title describes Anadi as the manager of Smarajit and that one of the witnesses to the document was Annada Prasad De who has been described in the same deed as the authorised gomasta on behalf of Smarajit. It was argued that on the basis of the oral evidence and also having regard to the deed of Amalnama as well as the registered Kobala of October 18, 1943, by which Smarajit transferred the land to Indurekha the inference is irresistible that Anadi must have been authorised to grant the Amalnama. We have gone through both the deed of Amalnama as well as the registered Kobala but we find no warrant for such an inference. There is merely a statement in the registered Kobala that Anadi was a local agent of Indurekha's husband and that he was instrumental in obtaining possession of the property through court. We do not see how this connotes any authority to transfer or dispose of property on behalf of Indurekha. We have also gone through the oral evidence of the appellant carefully. Even he does not say anywhere that Anadi had the authority to dispose of property. He merely harps on the statement that Anadi was a manager of Smarajit. Indeed the evidence of the appellant himself shows that neither Smarajit nor Indurekha figured in any manner in the transaction leading to the settlement of the land with the appellant. The appellant admits that he had never seen any writing by Smarajit appointing Anadi as a Manager. Though he knew Smarajit he never had any discussion with him. He further admits that he did not go either to Indurekha for settlement or to Smarajit on any occasion whatsoever. Even so far as Annada is concerned the appellant admits that he had not seen any appointment letter from Anadi in favour of Annada. In this connection it should be mentioned that Indurekha's husband Panchu Gopal who

according to the plaintiff looked after her property has stated clearly that Anadi was never a manager of his wife's estate and that he had never been entrusted with the work of "setting tenants, creating jamas, realising rents" in the mahal. Panchu Gopal also denies that Anadi was at any time Smarajit's manager. As for Annada, Panchu Gopal admits that Annada used to work as a Naib before the land in question was bought by Smarajit as his wife's benamdar but he states clearly that no authority was given to Annada at any time to settle or induct tenants in the mahal. He further says that even in the Dakhilas or rent receipts which used to be issued on behalf of his wife, there is a clear mention that the person who received the rents had no authority to settle jamas. Panchu Gopal further stated that the appellant had not on any occasion approached him for settlement of the land. In view of all this we find it impossible to accept the appellant's contention that Anadi had any authority to settle the land with him.

5. It was urged on behalf of the appellant that there are certain rent receipts in evidence which indicate that the appellant had paid rents to Indurekha. It was sought to be contended that since Indurekha had accepted rents she should be estopped from denying the appellant's title. We cannot persuade ourselves to accept this contention either. There is no evidence to show that the rents were collected from the appellant with the knowledge and consent of Indurekha. It has been suggested on her behalf that some dishonest gomastas had collected rents from the appellant and that those gomastas had neither rendered accounts nor handed over those rents to her. It is sufficient that the rent receipts in question were never put to either Indurekha or her husband at the time appellant's contention based on estoppel.

6. No other point was urged on behalf of the appellant. In the circumstances, we find no merit in the appeal and dismiss the appeal with costs.

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