Privy Council Appeal No. 18 *of* 1937
Patna Appeal No. 75 *of* 1931

Jugal Kishore Narain Singh, since deceased (now represented by Ram Chandra Prasad Singh and others) *Appellants*

v.

Charoo Chandra Sur and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST MARCH, 1939

Present at the Hearing:

LORD ROMER
LORD PORTER
SIR GEORGE RANKIN

[*Delivered by* LORD PORTER]

The question for determination in the present case is whether a lease of a certain village in the district of Gaya in Behar is binding on the respondents.

The land involved had been the property of one Nebaran Chandra Biswas who died without issue leaving a widow Mussamat Srimati Kiransasi Dasi who had a Hindu widow's estate in the property after his death. On her death the respondents who were the reversioners of the estate to her late husband were entitled to the property.

The husband died in 1895. His widow was then about 24 years of age. On the 7th April, 1919, she executed a lease for 11 years of the village of Chokti Amarwan, Thana Nawaba in favour of the predecessor of the appellants at a yearly rent of Rs.3,350 payable in five annual instalments. The lease provided that the tenant should deposit a sum of Rs.3,350 to be held by the lessor without interest and that this sum should be restored to the tenant by a deduction from the three last instalments payable in each of the two last years of the lease. It also contained a number of covenants by the tenant imposing upon him obligations as to the cultivation, management and improvement of the land together with a liability to meet the outgoings except Government dues and to undertake the expense of certain costs of litigation.

The lease contains a statement signed by Amulya Krishna Mitra, pleader, Howrah Court, that it was read over and explained to the lessor, and it further bears an endorsement signed presumably by the Registrar of Calcutta or his representative to the effect that the lessor admitted

the execution and that the Registrar was satisfied that the document had been executed voluntarily by her. The lease did not come to an end until May, 1930, and the widow died on the 12th September, 1924, some six years before its termination. After her death the appellants' predecessor admittedly remained in possession of the property until December, 1926, when the respondents dispossessed him.

Meanwhile on the 20th December, 1924, two of the respondents, viz., Prasanna Kumar Sur and Charoo Chandra Sur, executed a power of attorney in favour of Narendra Nath Neogi, the fourth defendant. The power of attorney is a limited one but at any rate entitled the grantee to collect money and give a receipt for it. The third defendant was not a party to this document but it appears from the evidence that he also gave a power of attorney which however was returned to him about a year after its execution and was not acted upon after that time.

Whatever the effect however of the powers of attorney, the fourth defendant appears to have managed the affairs of his co-defendants, including all that had to be done under the lease now in dispute, and to have received the rent payable under it. He so stated in evidence and was not contradicted and receipts dated the 4th November, 1925, and in March, June, July, September and October, 1926, were produced by him in corroboration of his story.

Shortly after the appellants' predecessor was dispossessed, a ryot of certain land in the village the subject matter of the lease, instituted proceedings before the Subdivisional Officer of Nawadah against the respondents asking for the division of the produce of the land between himself and the landlords under section 69 of the Bengal Tenancy Act, 1855. About the same time the appellants' predecessor began proceedings under the Code of Criminal Procedure alleging that he feared a breach of the peace by the respondents in connection with his possession of the village. In both these proceedings the respondents filed petitions in opposition alleging that the lease had terminated on the death of the widow, that they had thereafter orally granted two successive yearly leases to the appellants' predecessor, and that on the termination of the second had taken peaceful possession of the said village.

Thereafter on the 1st September, 1929, the appellants' predecessor instituted the present suit claiming mesne profits from the date of dispossession until the termination of the lease and a return of the deposit made in respect of rent at the beginning of the lease. In answer to that claim the respondents asserted that the widow did not act as a prudent manager in making the lease nor was it for the benefit of the estate, denied that they ever conferred any power or authority to the fourth defendant to ratify or grant leases, denied that they had themselves ever ratified the lease in question and said that they had withdrawn the powers of attorney, whatever their effect, by the 6th June, 1927. The

defence contained no allegation that the widow had not properly understood or had not voluntarily executed the lease.

At the hearing of the suit the Subordinate Judge framed certain issues of which the following may be quoted:—

(2) Was the lease in question for justifying necessity and for the benefit of the estate?

(3) Did the respondents grant yearly leases to the plaintiff during the years 1332, 1333—i.e., 1925 and 1926?

(4) Did the respondents 1 to 3 ratify and affirm the lease?

(5) Was the appellants' predecessor wrongly dispossessed from the year 1927?

(7) Was the appellants' predecessor entitled to mesne profits?

(8) To what relief, if any, was the appellant's predecessor entitled?

To these issues he answered that in the circumstances the lease was for justifying necessity and for the benefit of the estate, that the respondents had not granted yearly leases but had ratified and affirmed the original lease, that the appellants' predecessor was wrongly dispossessed from the year 1927 and that he was entitled to mesne profits and the return of three-quarters of the deposit.

On the 16th June, 1928, and before the date of the suit, the fourth defendant had sold his quarter share in the village to the appellants' predecessor. After the hearing he died and his name has been deleted from the record.

From the decree of the Subordinate Judge the other three defendants appealed to the High Court at Patna. Pending the hearing of the appeal the first defendant Parsano Kumar Sur settled his differences with the appellants' predecessor and filed a compromise petition. The appeal was then proceeded with by the second and third defendants only.

The High Court allowed the appeal on two grounds. By the judgment which was delivered by Varma J. it was held in the first place that the lease had not been ratified. That judgment did not in terms deal with the question whether the respondents had, as found by the Subordinate Judge, orally ratified the lease. The decision on this point was based solely on the fact that the only power of attorney produced was signed by two and not three of the respondents and that in any case it gave no power to grant or ratify leases and therefore, although the appellants' predecessor continued in possession for about two years after the death of the lessor, there was no ratification.

In the second place it was held that upon the evidence produced there was nothing to show that the lessor who was a purdanishin lady understood the nature of the transaction into which she was entering, and that amongst other things she had never been informed that in the lessee's view the

property was capable of yielding an increased income of 50 to 100 per cent. as a result of a relatively small expenditure. It was therefore held that the lease was not only voidable as against the reversioners under the first ground, but void even as against the widow under the second.

So far as this latter ground is concerned their Lordships do not think it was open to the respondents to rely upon it in the High Court or before the Board. Such a plea if successful would avoid the lease *ab initio*. It is of course true that the onus is upon one who sets up the validity of a lease granted by a purdanashin lady to prove that she understood the nature and effect of her act. See *Farid un-nisa* v. *Mukhtar Ahmad*, (1925) 52 I.A. 342. But no plea challenging the validity of the lease was made in the defendants' written statement and their Lordships would be loth to entertain such a plea in a case where no complaint was made by the lady during her lifetime, and where she had received and enjoyed the benefit of the rent for a number of years before her death.

The contention that the lease was neither prudent nor for the benefit of the estate would not avoid the lease but merely make it voidable at the option of the reversioners on the determination of the life interest.

Their Lordships have therefore first to determine whether the lease was prudent and beneficial, and secondly, if it was not proved to be so, whether the reversioners avoided or affirmed it.

The appellants urged that the lease was both prudent and beneficial. The evidence, they maintained, proved that the lady, being purdanashin and living in Calcutta whereas the estate was in the heart of Behar, would herself have great difficulty in managing it, that she had no relations competent to look after it, that the village was in fact not properly managed and the irrigation neglected, that the tenants were in many cases refractory, and that some half dozen litigious cases were pending between them and their landlady.

On the other hand the respondents contended that the evidence showed no exceptional difficulty in managing the estate, that the pending suits were mere assertions of the tenants' legal rights to have the produce of their holdings equitably apportioned between them and the lessor, and that even if it were true that the irrigation was somewhat neglected, much better terms could have been obtained from a lessee more especially as the appellants' predecessor by an expenditure of some eight or nine hundred rupees was able, on his own evidence, to increase the rent which he in his turn received from the occupiers to a sum of 9,000 to 12,000 rupees yearly. Moreover they said the lady had received Rs.3,350 which in effect was advance rent and as a result her successors in each of the last two years of the tenancy would receive not Rs.3,350 but that sum less Rs.1,675, i.e., Rs.1,675 only.

Their Lordships are not convinced that the lease was either prudent or beneficial to the estate. In their view the management of the estate was not so difficult as to warrant the granting of a lease which after the expenditure of a relatively small sum left so large a profit in the hands of the grantee, and they are also influenced by the fact that the widow had received a sum of Rs.3,350 which under the terms of the lease would diminish the rent receivable by that amount in the last two years during which it would run.

There remains however the question of confirmation As to this the appellants submitted that though the power of attorney given to the fourth defendant which was produced bound only two of the three other defendants, yet a similar power of attorney was proved to have been given by the third defendant, and though these powers of attorney did not authorize the fourth defendant to grant or confirm leases yet they did authorize him to receive rent, that in fact the respondents left the fourth defendant to manage the estate for two years and must have known of the lease and that their manager was permitting the appellants' predecessor to continue to occupy the estate and receiving rent under it, and that the evidence established that all four defendants had orally confirmed the lease.

Out of the three defendants in question the first alone gave evidence, but it was maintained on their behalf that the Board should accept his statement that those three defendants never knew of or received any rent under the lease and that the lessee continued to hold not under the lease but under an oral agreement for a yearly tenancy.

Their Lordships are not prepared to accept the view that there was a specific affirmation of the tenancy either by the four defendants or indeed by the fourth defendant alone, nor do they place credence on the evidence that there was any agreement for a yearly tenancy. In their view the true inference is that the defendants were content to permit the fourth defendant to manage the estate and receive the rent with full knowledge of the existence of the tenancy, and that it was only when the lease was running to its end that, realizing the diminution in the rent which they were about to receive, they determined to put an end to the lease and dispossess the tenant. Their Lordships cannot accept the view that the tenant would without protest have accepted a yearly tenancy for so long as the respondents chose to grant one thereby foregoing all the advantage of the deposit which he had made.

It is said that this was not the case originally presented on behalf of the appellants, that the only contention was that the lease had been specifically affirmed and that their Lordships' Board should hold them strictly to the wording of the plaint. In their Lordships' opinion however an affirmation by conduct is not inconsistent with the contention and is implicit in the claim.

In support of his case the appellants' predecessor, in addition to producing the receipts for rent given him by the fourth defendant, put before the court a wasilbaki account

dated the 2nd April, 1925, and purporting to be a settlement of accounts in respect of the years 1923, 1924 and part of 1925. This document contains credits for payment of rent in respect of periods before and after the death of the widow and treats them as part of one running account. It is therefore said to show a recognition and affirmation of the lease. Their Lordships are not however prepared to accept this evidence. There is force in the argument presented by the respondents that if this account had been as it purported to be, in existence at the time of the proceedings before the Sub-divisional Officer it would then have been produced in support of the appellants' predecessor's claim that he was entitled to possession of the village. But even if it was then in existence, the fourth defendant did not write it himself nor did he fully understand the language in which it was written, and it is by no means clear that it was prepared with the assent of the other three defendants.

Apart from the support of this document however, their Lordships take the view that the evidence sufficiently established that the defendants were content to treat the lease as binding upon them and to receive the rent due under it. The High Court in coming to their conclusion do not appear to have considered the question of affirmation by conduct. In terms, at any rate, all they purported to decide was that the power of attorney or powers of attorney gave no authority to the fourth defendant to confirm the lease. That finding no doubt is accurate, but for the reasons given it is not conclusive of the matter.

If then, as their Lordships think, the appellants' predecessor was entitled to enjoy the lease until the end of the term, there remains the question as to how the mesne profits are to be calculated. The learned Subordinate Judge has passed a decree for a refund of three-quarters of the deposit of Rs.3,350 and for mesne profits for the years 1927 to 1930, crediting, however, the first three defendants with any collection of rent made by the plaintiff for the year 1927.

In substance this decree is right but in form it is wrong. The appellants are not entitled to a return of the deposit or any portion of it. They are, however, entitled in taking an account of the mesne profits to the difference between the rent the respondents would have received had their predecessor been left in possession, and the amount which those respondents in fact received whether in money or kind or otherwise by reason of their possession of the estate. The rent which they would have received from the appellants' predecessor, however, would not have been Rs.3,350 in each of the last two years, but Rs.1,675 only.

Upon this basis the appellants are entitled to mesne profits for the period beginning with the date at which their predecessor was dispossessed and ending with the termination of the lease together with interest on such mesne profits—Interest should be at 5 per cent. and calculated yearly. But they are not entitled to the whole 16 anna share since the

first and fourth defendants have now compromised the matter. They should therefore receive only an 8 anna share of the total amount ascertained as aforesaid.

In substance the appellants have succeeded in their appeal and should receive costs both before their Lordships' Board and in the High Court.

In accordance with the views they have expressed their Lordships will humbly advise His Majesty that the appeal be allowed, the decree of the High Court be reversed, the decree of the Subordinate Judge be varied, that the suit be decreed against the second and third defendants for half of the mesne profits accruing to the respondents by reason of the dispossession of the appellants' predecessor from the beginning of the *fasli* year 1334 to the end of the *fasli* year 1337 together with interest thereon at 5 per cent. calculated yearly—half the collection of rent (if any) made by the appellants' predecessor for the *fasli* year 1334 to be calculated in favour of the respondents.

The decree of the Subordinate Judge as to costs will be restored and the respondents must pay the appellants' costs in the High Court and before their Lordships' Board.

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In the Privy Council.

JUGAL KISHORE NARAIN SINGH, SINCE DECEASED (NOW REPRESENTED BY RAM CHANDRA PRASAD SINGH AND OTHERS)

v.

CHAROO CHANDRA SUR AND OTHERS

DELIVERED BY LORD PORTER

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