

BADRI NARAIN JHA AND OTHERS

v.

RAMESHWAR DAYAL SINGH AND OTHERS.

[SAIYID FAZL ALI, MEHAR CHAND MAHAJAN,
MUKHERJEA and CHANDRASEKHARA AIYAR JJ.]

Landlord and tenant—Merger—One of several joint holders of mokarrari interest acquiring portion of lakhraj interest—No merger—Partition amongst lessees inter se—Integrity of lease, qua lessor, not affected.

If a lessor purchases the whole of the lessee's interest, the lease is extinguished by merger, but there can be no merger or extinction where one of several joint holders of the mokarrari interest purchases portion of the lakhraj interest.

A partition *inter se* amongst several mokarraridars does not in any way affect the integrity of the tenancy or make each holder of an interest in it a separate holder of a different tenancy, and notwithstanding such partition the mokarraridars remain liable *qua* the lessor or the payment of the whole rent as one tenant.

White v. Tyndall (13 App. Cas. 263) referred to.

CIVIL APPELLATE JURISDICTION : Appeal from a judgment and decree of the High Court of Judicature at Patna dated 14th February, 1946, in Appeal from Original Decree No. 117 of 1942 arising out of Title Suit No. 9 of 1939 : Civil Appeal No. 40 of 1950.

S. C. Misra for the appellant.

N. C. Chatterjee (P. B. Gangoli, with him) for the respondent.

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MAHAJAN J.—This appeal arises out of Suit No. 9 of 1939 instituted in the Court of the Subordinate Judge of Palamau by the appellants against the respondents for a number of declarations in respect to the title to certain lands and for an injunction restraining the respondents from proceeding with a rent suit. The suit was decreed by the Subordinate Judge but on appeal this decision was reversed by the High Court of Judicature at Patna and the appellants' suit was dismissed.

The salient facts of the case are as follows : Village Darha belonged to a family of Pathaks as their ancestral lakhraj. Over a hundred years ago the Pathaks granted the entire village in mokarrari to the ancestors of the family of Singhas (defendants' first and second parties) at an annual jama of Rs. 24. The mokarrari interest eventually devolved on three branches of the Singha family, each branch getting in the following proportions : Parameshwar Dayal and others, defendants' first party, to the extent of six annas ; Bisheswar Dayal Singh, defendants' second party, to the extent of eight annas ; and Madho Saran Singh, to the extent of two annas. Subsequently, the two annas share of Madho Saran Singh was purchased by Hiranand Jha, father of the plaintiffs, jointly with Durganand Jha, and Dharam Dayal. Dharam Dayal was a mere benamidar for Hiranand Jha.

On the 5th June, 1916, Bisheshwar Dayal Singh purchased six anna share in the lakhraj interest from Deolal Pathak and others and on the 9th February, 1917, he purchased another two anna share from Mandil Pathak. By virtue of these purchases he came to own the lakhraj interest to the extent of eight anna share. He already held the mokarrari interest to the same extent which had devolved on him by inheritance.

Some time in the year 1917 or 1918 Hiranand Jha and Durganand Jha, who had acquired by purchase two anna mokarrari interest of Madho Saran Singh

purchased in execution of a rent decree the raiyati interest in the whole village and came into possession of it. They thus became mokarraridars of two anna share and raiyats of sixteen annas of the village lands.

In the year 1918, Title Suit No. 59 of 1918 was instituted in the court of the Subordinate Judge of Palamau for partition of the lands situate in several villages and belonging to the family of the defendants' first and second parties. The Jhas were impleaded as defendants in the suit, being co-sharers in part of the property in suit. This suit was decreed in the year 1921, and in the final partition an allotment of two annas share in Darha village was made in their favour. The remaining fourteen anna share excluding khatian 1, 3 and 6 was allotted to the defendants' first party. These three khatians were allotted to Bisheshwar Dayal Singh and in exchange for the remaining portions of his interest in that village he was given some property in village Holeya. The result of the partition proceedings was that the defendants' first party came to hold fourteen anna mokarrari interest in village Darha, Bisheshwar Dayal Singh's interest was limited to three khatians only, and the Jhas got a separate allotment for their two anna share in the mokarrari. It appears that some time about the year 1926 the lakhraj interest holders, *i.e.*, the Pathaks and Bisheshwar Dayal Singh, were in default in payment of the cess due to Government. On the 17th August, 1926, proceedings were taken against them for recovery of the cess and their interest was sold in execution of a certificate on the 18th October, 1927, to one Bijainandan Sahay. The sale obviously was of the lakhraj interest. This was confirmed on the 19th December, 1927; and a sale certificate was issued on the 10th March, 1928. This was followed by delivery of possession on 15th July, 1928. Possession was obtained by one Kamta Prasad who had acquired this interest from Bijainandan Sahay on the 20th April, 1928. On the 1st May, 1933, Kamta Prasad transferred his interest in the village to the plaintiffs who thus became proprietors of sixteen anna share in the village and mokarraridars as to two anna

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share and raiyats of the entire sixteen annas in the whole village.

On the 21st September, 1934, the defendants' first party as mokarraridars brought a suit against the plaintiffs for arrears of raiyati rent for the years 1338-39 F. to the extent of six annas share and for the years 1340-41 F. to the extent of fourteen anna share claiming that under the partition decree they got a fourteen anna share in the mokarrari interest in the village. Plaintiffs contested the suit alleging that Bisheshwar's mokarrari interest had merged in the lakhraj interest that was purchased by him from the Pathaks in the years 1916-17, and that by the sale under the Government's certificate his whole eight anna interest in the village including both the lakhraj and the mokarrari had passed on to the plaintiffs and that the defendants' first party could only claim rent from them to the extent of the six anna share in the mokarrari. This plea was disallowed and the defendants' first party's claim for rent was decreed in full. The decree was upheld on appeal and second appeal. The question of title was, however, left open. In the year 1938 another suit for rent was filed by the defendants' first party as mokarraridars to recover fourteen anna share of the rent for the years subsequent to fasli 1341. As a result of this suit, the plaintiffs brought the present suit for declaration and injunction on the allegation that the eight anna mokarrari interest of Bisheshwar Dayal Singh had merged in his lakhraj interest, that by the certificate sale Bisheshwar Dayal Singh lost all his interest in the village both lakhraj and mokarrari by reason of merger, that the partition decree of the year 1921 was illegal and in any case, under that decree the defendants' first party got only six anna mokarrari interest and were entitled to realize rents from the tenants only to that extent. An injunction was also claimed restraining the defendants from proceeding with the rent suit. In the plaint, it was alleged that there was a private partition between the mokarraridars by virtue of which the lands of village Darha were divided between the three sets of mokarraridars, each set being

in separate possession of its own separate and defined shares. It was also pleaded that there was another partition between the proprietors of the lakhraj interest, that is, between Bisheshwar Dayal Singh, on the one hand and Deolal Pathak, Neman Pathak and Surajnath Pathak on the other, by virtue of which the lands that were in mokarrari patties of Parmeshwar Dayal Singh and others and Hiranand Jha and Durganand Jha fell in the patti of Deolal Pathak and others, while the lands that were in the mokarrari patti of the defendants' second party fell in his proprietary lakhraj patti and that as a result of these partitions the mokarrari interest of the defendants' second party merged in his lakhraj interest and under a certificate sale the whole of his interest passed to the plaintiffs.

The trial Judge held that both the partitions alleged by the plaintiffs in paragraphs 5 and 8 of their plaint were proved and that the mokarrari interest of Bisheshwar Dayal Singh merged in his lakhraj interest and that at the certificate sale the purchaser acquired his complete interest both lakhraj and mokarrari along with the eight anna lakhraj interest of the Pathaks and that the defendants' first party were mokarrari-dars of six anna interest in the village and to that extent were entitled to a decree in their rent suit and could not claim a decree for rent to the extent of fourteen anna share. The High Court in appeal held that none of the partitions alleged by the plaintiffs were proved and that the mokarrari interest of eight annas could not merge in the lakhraj interest of sixteen annas held jointly by Bisheshwar Dayal Singh with the Pathaks. As a result of this decision the plaintiffs' suit was dismissed.

In this appeal it was contended by the learned counsel for the appellants that the High Court had erroneously held that the two partitions set up by the plaintiffs in paragraphs 5 and 8 had not been proved. It was argued that the evidence on the record, both documentary and oral, fully established the fact of the two partitions and that in view of these partitions it should have been held that Bisheshwar Dayal Singh

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became separate owner of eight anna lakhraj interest and in that interest his mokarrari interest of eight annas merged, and that under the certificate sale the whole of this interest passed on to the purchaser in execution and that being so, the defendants' first party could only maintain a suit for recovery of rent from the raiyats to the extent of their six anna mokarrari interest.

In our opinion, this appeal can be disposed of on a short point without taking into consideration the respective contentions of the parties raised before us or urged in the two courts below. The plaintiffs' case rests solely on the allegation of merger of the eight anna lakhraj interest of Bisheshwar Dayal Singh with his mokarrari interest to the same extent. It, however, seems to us that there was no scope for the application of the doctrine of merger to the facts disclosed by the plaintiffs in their plaint. If the lessor purchases the lessee's interest, the lease no doubt is extinguished as the same man cannot at the same time be both a landlord and a tenant, but there is no extinction of the lease if one of the several lessees purchases only a part of the lessor's interest. In such a case the leasehold and the reversion cannot be said to coincide. It was the plaintiff's case that mauza Darha was originally granted in mokarrari under a single contract of lease and it was by inheritance that the lessee's interest devolved on three branches of the family, Bisheshwar Dayal Singh getting an interest of eight annas in the whole of the leasehold. He then purchased a six anna interest in the entire reversion in the year 1916 and another two anna interest in it in the year 1917. By these purchases he became a joint owner in the entire lakhraj holding to the extent of a moiety. He, however, never came to own the entire lakhraj interest in the village or the entire mokarrari interest therein. There was thus no coalescence of the interest of the lessor and the lessee in the whole of the estate which was subject to lakhraj and mokarrari interests and that being so, the mokarrari interest of Bisheshwar Dayal Singh did not merge in his lakhraj interest.

Mere purchase by Bisheshwar Dayal Singh of portions of the lakhraj interest could not bring about an extinction of the lease or break its integrity as he was only one of the several joint holders of the mokarrari interest. An *inter se* partition of the mokarrari interest amongst the mokarraridars as alleged by the plaintiffs could not affect their liability qua the lessor for the payment of the whole rent, as several tenants of a tenancy in law constitute but a single tenant, and qua the landlord they constitute one person, each constituent part of which possesses certain common rights in the whole and is liable to discharge common obligations in its entirety. In the words of Lord Halsbury in *White v. Tyndall*⁽¹⁾, the parties to whom a demise is made hold as tenants in common but what they covenant to pay is one rent, not two rents and not each to pay half a rent but one rent. There 'is a privity of the estate between the tenant and the landlord in the whole of the leasehold and he is liable for all the covenants running with the land. In law, therefore an *inter se* partition of the mokarrari interest could not affect the integrity of the lease and it could not be said that Bisheshwar Dayal Singh under the alleged partition became a mokarraridar under another contract of lease. Such partitions amongst several lessees *inter se* are usually made for convenience of enjoyment of the leasehold but they do not in any way affect the integrity of the tenancy or make each holder of an interest in it as a separate holder of a different tenancy. In the present case there was not even an allegation that the tenancy was severed and the several tenancies came into existence as a result of the partition *qua* the landlord. Similarly the allegation of partition *inter se* among the several owners of the lakhraj holding could not in any way affect the integrity of the lease in the absence of an allegation of a fresh contract between the split up owners of the holding and the different owners in the mokarrari interest. The lakhraj holding in the village still remains a single holding and it was not alleged that it was split up in different holdings. All owners

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of the lakhraj interest are jointly responsible for payment of the cess to Government and it was because of their default in payment of the cess that the whole lakhraj interest was sold in the certificate sale. In this situation none of the conditions necessary for the application of the doctrine of merger can be said to have been made out by the allegations made in the plaint. On the plaintiffs' own case the lease is still a live one in respect of the six anna interest of the defendants' first party and in these circumstances it is not possible to hold that it has become extinct to the extent of eight anna interest of Bisheshwar Dayal Singh in the absence of any allegation that any fresh contract, express or implied, was arrived at between the parties. The leasehold has not in any way been drowned in the reversion and both lakhraj and mokarrari interest are still intact.

For the reasons given above we agree with the decision of the High Court that Bisheshwar Dayal Singh's interest in the mokarrari did not merge in his lakhraj interest and that under the certificate sale it did not pass to the execution purchaser; on the other hand, it vested in the defendants' first party by reason of the family partition and they became entitled as mokarraridars to recover rent from the plaintiffs' raiyats to the extent of fourteen annas share. All that passed at the certificate sale to the execution purchaser and subsequently to the plaintiffs was merely the lakhraj interest of the Pathaks and of Bisheshwar Dayal Singh and it could not be that at this sale qua one judgment-debtor a larger interest passed to the execution purchaser than in respect of the other debtor. In view of our decision that the doctrine of merger has no application to the facts of the case, the plaintiffs' case is bound to fail. We accordingly hold that there is no substance in this appeal and we dismiss it with costs.

Appeal dismissed.

Agent for the appellant : S. P. Varma.

Agent for the respondent : P. K. Chatterjee.
