Nirshi Dhobin & Ors vs Dr. Sudhir Kumar Mukherji And Ors on 30 July, 1968

Equivalent citations: 1969 AIR 864, 1969 SCR (1) 469, AIR 1969 SUPREME COURT 864

Author: K.S. Hegde

Bench: K.S. Hegde, R.S. Bachawat

PETITIONER:
NIRSHI DHOBIN & ORS.

Vs.

RESPONDENT:
DR. SUDHIR KUMAR MUKHERJI AND ORS.

DATE OF JUDGMENT:
30/07/1968

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
BACHAWAT, R.S.

CITATION:
1969 AIR 864 1969 SCR (1) 469

ACT:
Stare decisis--Long line of judgments of courts taking a certain view --Different view, even if correct, should not be taken where titles and transactions based on the settled view would be affected.
Bihar Tenancy Act and Transfer of Property Act s. 117--Lease of agricultural land including homestead-- Sub-lease of homestead by original lessee whether an agricultural lease governed by the Tenancy Act or a non-agricultural lease governed by the Transfer of Property Act.

HEADNOTE:
C was the lessee of a plot which consisted of agricultural land as well as a homestead. The homestead was later leased to the appellants. The respondents purchased the rights of C and brought a suit against the appellants for possession of

the homestead. The contention of the appellants in defence was that the suit had not been brought according to the provisions of the Bihar Tenancy Act and hence was not maintainable. The contention of the respondents was that the lease of the homestead was not an agricultural lease within the meaning of s. 117 of the Transfer of Property Act and was invalid under the provisions of the latter Act. The trial court decreed the suit. The first appellate court however dismissed it. In doing so it relied on earlier rulings of the Patna and Calcutta High Courts which had held the field for over 55 years, to the effect that if the main lease is a lease for agricultural purposes all sub-leases of portions of that leasehold should also be considered as agricultural leases despite the fact that a particular lease may he that of a homestead only. The High Court in further appeal departed from the view taken in the earlier cases and decided against the appellants, who came to this Court. The main question for consideration was whether the High Court was justified in departing from the settled view.

HELD: The rule laid down in the earlier decisions was never departed from in the past. The Tenancy Act was amended a number of times but yet the legislature did not think it necessary to alter or modify the said rule. In law finality is of the utmost importance. Unless so required in public interest questions of law firmly 'settled by a long course of decisions should not ordinarily be disturbed and it is all the more so in the ease of an interpretation affecting property rights. [471 C-E]

The rule that where the terms of a statute or ordinance are clear then even a long and uniform course of judicial interpretation of it may be overruled, if it is' contrary to the clear meaning of the enactment is inapplicable to decisions on the basis of which titles and transactions must have been rounded [477 D]

Case law referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 955 of 1965.

Appeal by special leave from the judgment and decree dated March 17, 1961 of the Patna High Court in Appeal from Appellate Decree No. 897 of 1956.

U.P. Singh, for the appellants.

K.K. Sinha for respondent No. 1.

The Judgment of the Court was delivered by Hegde, J. In this case a Full Bench of the Patna High Court differing from the view taken in a series. of earlier decisions of that High Court as well as the

High Court of Calcutta held that the provisions of Bihar Tenancy Act (to be briefly referred to hereinafter as the Act) do not apply to a lease of a homestead though that homestead was a part of an earlier lease which was admittedly an agricultural lease and to which the provisions of the Act applied. The appellant challenges the correctness of that decision.

The relevant facts as. found by the fact finding courts are:One Chakrapani Singh was the lessee of a plot which consisted of agricultural lands as well as a homestead. The homestead was later separately leased to defendants 1 and 2 (appellants). Thereafter the plaintiffs purchased the rights of the main lessee and sued the appellants for possession of the homestead. The appellants resisted the suit mainly on the ground that it had not been brought in accordance with the provisions of the Act and hence not maintainable. The contention of the plaintiffs is that the lease is invalid as it did not conform to the provisions of s. 117 of the Transfer of Property Act and therefore they are entitled to evict the appellants. The trial court decreed the plaintiff's suit but the first Appellate Court reversed the decree of the trial court and dismissed it. It followed the earlier rulings of the Patna High Court to the effect that if the main lease is a lease for agricultural purposes all sub-leases of portions of that leasehold should also be considered as agricultural leases despite the fact that a particular sub-lease may be that of a homestead only. The plaintiffs took the matter in second appeal to the High Court which was decided by a Full Bench which allowed the appeal as mentioned earlier. Two questions that arise for decision are (1) was the High Court right in holding that the lease in favour of the appellants is governed by s. 117 of the Transfer of Property Act and (2) whether in view of the uniform view taken in the earlier decisions during a period of nearly 55 years the High Court was justified in reopening the question. Till the decision under appeal High Courts of Patna and Calcutta proceeded on the basis that if the main lease is governed by the provisions of the Act and consequently taken out of the scope of the Transfer of Property Act then it must be held that all sub-leases of portions of the properties included in the main lease are agricultural leases; otherwise the main lease would cease to be a purely agricultural lease as it must be held to relate to both agricultural and non-agricultural lands. We agree with the Full Bench that the ratio of these decisions is open to question. If the legal position had not been firmly settled by a long chain of decisions commencing from 1903 onwards, it is likely that we would have concurred with the view taken by the Full Bench. But if we do so we would be unsettling a settled view of the law on the basis of which various rights must have been created, transactions entered into and titles founded. The rule laid down in the earlier decisions was never departed from in the past. The Act was amended a number of times but yet the legislature did not think it necessary to alter or modify the said rule. Different considerations would have arisen if the disputed interpretation related to a penal provision or the same is detrimental to public interest or causes public inconvenience. Law is not always logic. It is a part of life and more so in a democratic set up.. In law finality is of utmost importance. Unless so required in public interest, questions. of law firmly settled by a long course of decisions should not ordinarily be disturbed and it is all the more so in the case of an interpretation affecting property fights. In the instant case, there were no compelling reasons for the High Court to depart from the rule laid down earlier. The decision of the High Court, if allowed to stand is bound to disturb numerous transactions. It is solely on that ground we propose to set aside that decision. Now we shall refer to the; decided cases on the point.

The earliest decision on the point is Babu Ram Roy v. Mahendra Nath Sarnanta(1). The material facts of that case are similar to the facts of this case. The main lease in that case consisted of an agricultural lands as well as a homestead. The homestead was separately given on sub-lease by the main lessee but no registered lease deed was taken. Subsequently the main lessee sued for possession of the homestead. It was contended on his behalf that the lease in favour of the sub-lessee being a lease of non-agricultural property, the same is invalid as it was not given under a registered lease deed and hence he was entitled to a decree directing the ejectment of the defendants. The High Court rejected the plaintiff's claim holding that in order to maintain a suit for ejectment a notice ,under s. 49 el. 6, Bengal Tenancy Act was necessary and that notice had to be served in accordance with the rules framed under that Act. No notice having been given under that provision, the suit was held to be non-

(1) VIII, C.W.N. 454.

maintainable by Mitra J. His view was affirmed 'by a Division Bench consisting of Maclean C.J. and Pargiter J. The above decision was affirmed by another Division Bench of the Calcutta High Court in Abdul Karim Patwari v. A bdul Rahaman (1). The same view was taken by the said High Court in Krishna Kanta Ghosh v. Jadu Kasya(2) and in Kadrutulla and OrS. v. Upendra Kumar Chowdhury(3). The decision in Arun Kumar Sinha and Ors v. Durga Charan Basu(4) iS Of special importance. That case was decided by a Division Bench consisting of B.K. Mukherjea J. who later became the Judge as well as the Chief Justice of tiffs Court and Roxburgh J. There the learned Judges doubted the correctness of the earlier decisions but yet were of the opinion that public interest required that the interpretation placed on the provision of law by a long series of consistent decisions should not be departed. This what the learned Judges observed in that case.

> "But the principle was never dissented from, that in a case of this description, the question whether the tenancy is governed by the Bengal Tenancy Act or the Transfer of Property Act, would depend on the nature of the original tenancy, and not on the character of the parcel included in the sub-tenancy. The learned advocate who, appears for the appellants has subjected these decisions to a good deal of criticism. Had the matter been yes integral, we might have some hesitation in accepting the view enunciated in them. In the Bengal Tenancy Act, the raiyat is defined to be a person who acquires land primarily for purposes of cultivation; unless the letting was for purposes of agriculture the tenancy would not be governed by the Bengal Tenancy Act even if the superior interest was vested in the holding of the tenure to which the Bengal Tenancy Act was applicable. We do not think also. that any real anomaly would arise if as between a raiyat and his sublessee the rights were governed by the Transfer of Property Act. Mr. Das who appears for the respondents has contended that difficulties would arise in enforcing the provisions of ch. 14 Ben. Ten. Act. What he says is that the purchaser of a raiyati holding has the right to annul all sub-tenancies which are incumbrances under s. 161, Ben. Ten. Act; but if the raiyat has created a non- agricultural tenancy in respect of a portion of his lands for a fixed period which is. governed by the (1) 15 Cal. Law Journal 672.

(2) 19 Cal. W.N. 914.

(3) A.I.R. 1925 Cal. 203.

(4) A.I.R. 1941 Cal. 606.

> Transfer of Property Act, to allow a purchaser to annul such sub-tenancies would be to entitle him to go against the provisions of the Transfer of Property Act. We do not think that there is any substance in this contention. It is not necessary that the incumbrances which can be annulled under s.

167 Ben. Ten. Act must be incumbrances created under that Act. A mortgage is certainly an incumbrance which is created under the Transfer of Property Act but it can never be suggested that because it is governed by the Transfer of Property Act, it cannot be annulled by a purchaser who purchased the holding at a sale in execution of a rent decree under Chap. 14, Ben. Ten. Act.

The difficulty however is created by the way in which the expression "under-Raiyat"

> has been defined in s. 4 Ben. Ten. Act. An under-raiyat has been defined to be a tenant who holds immediately or mediately under a raiyat. It is not stated here, as in the case of a raiyat, that he must hold also for purposes of cultivation. It may be argued that this must be the implication, for the provisions relating to under raiyats which are contained in Chap. 7 Ben. Ten. Act are appropriate only to this character as an agricultural tenant. It cannot be denied however that the wording of S. 4, clause (3) Ben. Ten. Act is very wide, and' when the word has been interpreted in one way for a period of nearly 40 years without any dissension whatever, we think that we should not be justified in upsetting the long series of decisions. It is significant to note that considerable changes have been introduced the Bengal Tenancy Act in recent years but the Legislature which must be presumed to be aware of the law as laid down in the abovementioned decisions did not consider it necessary to make any changes in this respect."

It was not denied by the learned counsel' for the respondents that the principle enunciated in the abovementioned decisions was consistently followed by the Calcutta High Court even up-to-date. Hence it is not necessary to refer to the other decisions of that court. The Patna High Court consistently followed the decisions of the Calcutta High Court. In Mian Ahir and Ors v. Paramhans Pathak(1) while considering a case similar to the present case, the rule laid down in Babu Ram Roy's case was followed. also in Shrikishun Lal v. Harihar Sah and another (2). The law (1) A.I.R. 1939 Pat. 409.

(2) A.I.R. (36) 1949 Pat. 444.

laid down in those decisions was accepted as correct till the decision of the Full Bench in the present case.

At page 154 of Craies on Statute Law (6th Edition) it is observed:

> "In 1958 Lord Evershed M.R. said: "There is wellestablished authority for the view that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision." Again at page 155, it is observed: 'Earlier in Morgan v. Crawshay, Lord Westbury had thus stated the rule: After explaining that it was unnecessary to examine the interest of a galee in iron ore mines, because supposing it to be regarded as a tenement and not merely as an incorporeal right, I should still arrive at the conclusion that we must bow to the uniform interpretation which has. been put upon the statute of EliZabeth and must not attempt to disturb the exposition it .has. received. If we find a uniform interpretation of a statute upon a question materially affecting property and perpetually recurring and which has been adhered to without interruption it would be impossible for us to introduce the precedent of disregarding that interpretation. Disagreeing with it would thereby shaking rights and ritles which have been rounded through so many years upon the c onviction that interpretation is the legal and proper one and is one which will not be departed from. In that the House of Lords decided that iron mines and all other mines except coal mines were, under the Statute of Elizabeth, exempt from liability to. the poor rate. The statute mentioned coal mines only, and a long course of decision had established that the rule expressi unius est exclusio alterius applied to the enactment." (that decision is reported in 1871 L.R. 5 H.L. 304). In Harding v. Howell(1) Lord Fitzgerald speaking for the Privy Council while dealing with the interpretation of a provision in a statute observed:
>
> "Their Lordships do not intend in the least to question the principle which governs the construction and effect of that statute as now long established by decided cases. It has been over and again said that 'so many titles stand on it that it must not be shaken' and in that their Lordships concur."

(1) 14 A.C. 307.

In Pugh v. Golden Valley Railway Co.(1). Thesiger L.J. bserved:

> "And the case is in principle a distinct authority for the proposition that in such circumstances as those which exist in the present case, the diversion of a river is unjustifiable. Viewed simply as the decision of a Court of first instance, the authority of this case, notwithstanding the respect due to the Judges who decided it, is not binding upon us; but, viewed in its character and practical results, it is one of a class of decisions which acquire a weight and effect beyond that which attaches to the relative' position of the Court from which they proceed. It constitutes an authority which, after it has stood for so long a period unchallenged, should not, in the interests of public convenience, and having regard to the protection of private rights, be overruled by this Court except upon very special considerations. For twelve years

> and upwards the case has continued unshaken by any judicial decision or criticism as an authoritative exposition of the meanmg of sect. 16 of the Railways Clauses Consolidation Act, 1845, in respect of the matter here in dispute. During such period hundreds. of Special Acts of Parliament have been passed sanctioning the construction of lines of railway and the consequent interference with private fights, and mcorporating for that purposes the provisions of the General Act. Promoters. must have sought their powers, landowners must have regulated their course of action, and parliamentary committees must have given their sanction to the projects submitted to them upon the faith and footing of a limit to the powers sought and conceded being found in the provisions of the general Act 'as interpreted from time to time by judicial decisions. If so., it is to be presumed that the limit put upon the powers of a railway company in regard to the diversion of roads and rivers by the decision of the Court of Kueens' Bench in Reg. v. Wycombe Railway Company must have exercised a material influence upon the relations of persons owing land proposed to be affected by special railway legislation and the promoters of that legislation."

In Murphy v. Deichler and Ors(2). Lord Loreburn L.C. speaking for the House of Lords observed:

> "I think this case falls within the rule that it is' not necessary or advisable to disturb a fixed practice (1) 15 Ch. Division 330.
>
> (2) [1909] A.C. 446 which has been long observed in regard to the disposition of property, even though it may have been disapproved at times by individual judges, where no real point of principle has been violated."

The Full Bench was of the view that the rule laid down in Babu Ram Roy's case and the decisions following it are clearly wrong. Hence even though that rule held the field for about 55 years, there is no justification for sustaining it. The Full Bench was of the opinion that in all cases where the terms of the statute are clear even a long and uniform course of judicial interpretation of it may be overruled if it is contrary to the meaning of the enactment. 'It accepted that to be the correct position in law and that rule is unqualified. In support thereof they relied on the Full Bench decision of the Allahabad High Court in Lallu Singh v. Gur Narain and Ors.(1) and the decision of the Privy Council in Tricomdas Cooverji Bhoja v. Sri Gopinath Jiu Thakur(2). The Full Bench decision of the Allahabad High Court relied on the Privy Council decision in Tricomdas Cooverji Bhoja's case and the Privy Council in its turn followed the decision in Arthur John Pate v. W.C. Pate and Ors(3). In the Allahabad case the contention of the defendant was that under Hindu Law as settled by decisions delivery of possession was absolutely necessary for the completion of a gift. Their Lordships held that whatever might have been the strict law prior to the passing of the Transfer of Property Act, it must now be held that gift of immovable property can be validly effected by registered instruments signed either by or on behalf of the donor and attested by at least two witnesses and nothing further is necessary to effectuate the transfer. It is in that context their Lordships observed that Where the terms of the statute or ordinance are clear then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning

of the enactment. In fact in that case the learned Judges did not depart from the rule laid down in the earlier cases as regards the scope of s. 123 of the Transfer of Property Act. They held that the earlier decisions under the Hindu Law cannot be followed in view of the change in the law effected by s. 123 of the Transfer of Property Act.

In Tricomdas Cooverjee's(2) case, the Privy Council did not depart from any well established principle of law. In fact their Lordships in the course of the Judgment referred to certain conflict of decisions on the point under consideration and in that context they happened to make the observations to which we have referred while dealing with the Allahabad decision. As mentioned (1) A.I.R 1922 All. 467.

(2) A.I.R. 1916 P.C. 182. (3) [1915]A.C. 1100.

earlier the decision of the Privy Council which was followed by the Full Bench of the Allahabad High Court relied on the decision in Pate v. Pate (1). That decision if we may say so with all respect explains the true legal position. In that case while dealing with the various decisions cited before them their Lordships observed:

> "With aH respect to the learned judges who so read the Ordinance in 1871, their Lordships not only think that their decision was erroneous, but also that even after the interval of forty four years it ought to be overruled. The present is not one of those cases in which inveterate error is left undisturbed because titles and transactions have been founded on it which it would be unjust to disturb." (emphasis supplied). From these observations it is clear that the rule that where the terms of a statute or ordinance are clear then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment is inapplicable to decisions on the basis of which titles and transactions must have been founded. For the reasons mentioned hereinbelow this appeal is allowed and the suit dismissed with costs of this Court.

G.C. Appeal allowed.
(1) [1915] A.C. 1100.
Sup. C1/68--16