Supreme Court of India
Chandranath Mukherjee vs Tusharika Debi And Others on 24 March, 1958
Equivalent citations: 1958 AIR 521, 1959 SCR 226
Author: B P Sinha
Bench: Sinha, Bhuvneshwar P.

PETITIONER:
CHANDRANATH MUKHERJEE

Vs.

RESPONDENT:
TUSHARIKA DEBI AND OTHERS

DATE OF JUDGMENT:
24/03/1958

BENCH:
SINHA, BHUVNESHWAR P.
BENCH:
SINHA, BHUVNESHWAR P.
IMAM, SYED JAFFER
SUBBARAO, K.

CITATION:
1958 AIR 521 1959 SCR 226

ACT:
Permanent Tenure--Right of successor to recover arrears of rent by suit-Notice of succession to landlord within six months, if mandatory-Mutation in landlord's rent roll-Mode of Proof Bengal Tenancy Act (Act VIII of 1885) as amended by Bengal Act IV of 1928, ss. 15, 16.

HEADNOTE:
The time limit of six months provided by s. 5 of the Bengal Tenancy Act within which a tenure-holder has to give notice of his succession to the landlord or have his name mutated in his rent-roll is not mandatory but directory in character and the only effect which non-observance of that time-limit can have under s. 16 of the Act, is to postpone his remedy to recover arrears of rent by way of suit till such time when he performs the duty cast upon him by s. 5 Of the Act, but it cannot, by itself, bar the remedy for all time to come. Section 16 is a penal provision and must be subjected to its statutory limitation and the penalty it imposes cannot be extended by implication.
Consequently, in a case where the sepatnidar resisted the durpatnidars' suit for recovery of arrears of rent on the ground, inter alia, that they had not got themselves mutated

in the landlord's records under s. 15 of the Bengal Tenancy Act and as such
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the suit was barred under s. 16 of the Act and the courts below found on the evidence adduced by the durpatnidars that the landlord had accepted rents from them and granted receipts after ordering mutation of their names in the rent-roll:
Held, that the courts below were right in holding in favour of the durpatnidars that there was the necessary mutation in the landlord's rent-roll.
The factum of mutation in the landlord's rent-roll can be proved not only by the production of original rent-roll or its certified copy but,failing these, also by other secondary proof of mutation.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 39 of 1955. Appeal from the judgment and decree dated August 28, 1953, of the Calcutta High Court in Appeal from Original Decree No. 97 of 1950 arising out of the judgment and decree dated April 27, 1950, of the Court of Second Sub-Judge of Zillah Hooghly in Rent Suit No. 3 of 1949.

B. Bagchi and P. K. Chosh, for the appellant. N. C. Chatterjee and D. N. Mukherjee, for the respondents. 1958. March 24. The following Judgment of the Court Was delivered by SINHA J.-The main controversy in this appeal on a certificate granted by the High Court of Calcutta, against the concurrent decisions of the courts below, centers round the true interpretation and effect of ss. 15 and 16 of the Bengal Tenancy Act-Act VIII of 1885-(hereinafter referred to as the Act). The courts below have substantially decreed the plaintiff 's suit for arrears of rent in respect of a se-patni tenure. Hence, the appeal by the defendant. The plaintiffs ancestor, Nirmal Chandra Benerjee, -was a durpatnidar under the patnidar in respect of the tenure in question. He died leaving him surviving, his three sons- Satya Ranjan, Satya Jiban and Satya Kiron-who became the durpatindars in respect of the tenure by succession, and there is no dispute that they were so mutated in the superior landlord's office. There was a partition suit between them in the court of the subordinate judge at Alipur, being Title Suit No. 128 of 1946. -During the pendency of that suit, Promode Kumar Banerjee was appointed Receiver of the properties under partition. Satya Jiban died during the pendency of the partition suit. The exact date of his death does not appear in the record. His heirs are: his widow Tusharika Debi and his two sons, Uptal Kumar Banerjee who is of unsound mind, and Ujjal Kumar Banerjee, a minor. The Receiver aforesaid, instituted the suit out of which this appeal arises, for arrears of rent, against the first defendant, now appellant, in respect of the years 1352 to 1355 B. S. He put the total claim inclusive of interest, at Rs. 40,000 and odd, which was subsequently reduced to Rs. 27,000 and odd. It is not necessary to go into the details of the claim, because the amount decreed is no more in controversy. To the suit for rent, being Rent Suit No. 3 of 1949, in the court of of Second Subordinate Judge, Hooghly, the heirs aforesaid of Satya Jiban were impleaded as proforma defendants Nos. 2, 2(a) and 2(b), and so were Satya Kiran and Satya Ranjan

as defendants 3 and 4, respectively. During the pendency of the rent suit, the partition suit was compromised, with the result that the durpatni tenure in question was allotted to Satya Jiban's branch of the family. Hence, the plaint was amended by an order of the court, dated July 25, 1949, by substituting the aforesaid heirs of Satya, Jiban as the plaintiffs in the place of the Receiver aforesaid, who was the original plaintiff and who was discharged from the record.

The suit was contested on a number of grounds, but it is now necessary only to refer to the plea in bar of the suit, namely, that the plaintiffs substituted as aforesaid, and by transposition from the category of proforma defendants to that of plaintiffs, were not entitled to sue for rent on the ground that they had not got themselves mutated in the place of their predecessors-in-title in the landlord's records and that, therefore, this suit was barred under s. 16 of the Act. It is no more necessary to set out the facts bearing on the devolution of title to the property in question, because that was not a controversy raised in the High Court, and the arguments in this Court were, therefore, confined to the technical plea aforesaid. After hearing the parties, the learned trial judge decreed the suit for Rs. 25,000 and odd. The first defendant preferred an appeal to the Calcutta High Court, and a -Divisional Bench of that Court, after hearing the parties, directed a limited remand to the trial court, for taking additional evidence in proof of certain documents filed by the plaintiffs but not properly proved at the original trial. The trial court was also directed to submit its findings on the question of the right of the plaintiffs to maintain the suit in view of the provisions of ss. 15 and 16 of the Act. After remand, the documents on proof were again, marked as exhibits I and 2, and the finding was returned by the trial court in due course. After the receipt of the finding, the High Court heard the appeal once again and dismissed it with costs. The appellant moved the High Court and obtained the necessary certificate. Hence this appeal. In this Court, it was argued on behalf of the appellant that the provisions of s. 15 are mandatory; that those provisions not having been complied with, the bar imposed by s. 16, operates against the plaintiffs, with the result that they are not entitled to recover the arrears of rent by suit. Sections 15 and 16 are in these terms:

" 15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the landlord or his common agent, if any, in the prescribed form within six months from the date of succession, in addition to or substitution of any other mode of service, in the manner referred to in sub-section (3) of section 12: Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section."

" 16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit or other proceeding any rent payable to him as the holder of the tenure, until the duties imposed upon him by section 15 have been performed."

It is common ground that the notice contemplated by s. 15, was not given, but it was contended on behalf of the plaintiff-respondents that the proviso to that section had been complied with inasmuch as evidence had been adduced by the plaintiffs and accepted by the courts below, that the superior landlords accepted rents from the plaintiffs and granted them rent-receipts in respect of the tenure in question, after ordering mutation of their names in the rent-,roll. In order to bring the case within the proviso to s. 15, quoted above, the plaintiffs served a requisition on the landlords-(I)

Maharajadhiraj of Burdwan, and (2) Sri Ramlal Bandopadhyaya, to produce all papers in respect of mutation of names regarding the tenure in question. Those documents were not produced, but the plaintiffs examined P. W. 2-an employee of the Burdwan Raj-and P. W. 3-their own employee-to prove the necessary mutation. P. W. 2 deposed that the plaintiffs paid Rs. 101 as fee for mutation of their names in the office of the Maharajadhiraj of Burdwan and that they were mutated in respect of the 8 annas' interest. P. W. 3, similarly, proves mutation in the office of Ramlal Babu, in respect of the other 8 annas' share. In pursuance of the mutation, rent was paid and accepted by the landlords. The necessary order of mutation and the rent- receipt-exhibits 2 and respectively-were produced and placed on record after being duly proved- Nothing has been brought out in the cross-examination of these two witnesses to detract from the value of their evidence. Naturally. therefore. the courts below had no difficulty in accepting their evidence corroborated by those pieces of documentary evidence. But it was contended on behalf of the appellant that s. 15 requires proof of mutation in the rent-roll of the landlord, and the rent-roll or its certified copy, should have been adduced in evidence, and in the absence of the primary evidence of mutation contained in the rent-roll the plaintiffs have failed to prove the requisite mutation. In our opinion, there is no substance in this contention. The landlords rent-roll was not in the custody or control of the plaintiffs. They served requisition on their landlords to produce those documents. As those documents were not produced by the parties who would ordinarily be in possession of their rent-rolls, the plaintiffs had no option but to adduce secondary evidence of the mutation, namely, the order sanctioning mutation and the payment of rent to the superior landlord, in pursuance of the sanction of mutation. Like any other disputed fact, the factum of mutation in the landlords rent-roll can be proved by the production of the original rent-roll or by its certified copy, if available, and failing those, by other secondary proof of mutation. In the circumstances, we are inclined to hold that in this case, the courts below were justified in coming to the conclusion that there was the necessary mutation of the plaintiffs in the landlords' rent-roll.

It was next contended that there is no proof that the mutation, even if made, had been made " within six months of the succession ". It is true that the date of the death of Satya Jiban, plaintiffs predecessor-in-title, is not known, if that is the point of time with reference to which the six months' period has to be calculated. If the starting point of time is the date of the allotment of the tenure in question to the plaintiffs' share as a result of the partition, we know that June 20, 1949, is the date of the compromise, as appears from the list of dates supplied by the counsel for the appellant. The rent-receipt, exhibit 1, is dated January 4, 1950, and the order of mutation passed by the Burdwan Raj, is dated January 20, 1950. Apparently, therefore, the mutation must have been effected within six months from the date of the compromise, as a result of which the entire tenure was allotted to the plaintiffs' share. If was not argued be-fore us that this was not a case of succession, as contemplated by s. 15, namely, the death of the last holder on the happening of which event, the succession to the tenure opened in favour of the plaintiffs. Satya Jiban had only one-third share in the entire tenure by inheritance from his father. The other two-thirds shares had been inherited by his two brothers aforesaid. Hence, strictly speaking, succession to only the one-third share of Satya Jiban, could open on his death. But as this aspect of the case was not canvassed before us, we need not express any opinion on it. As already indicated, the date of the death of Satya Jiban not having been brought on record and if the six months' period has to be counted from that date, it has got to be assumed in favour of the appellant that the mutation even if effected as found by the courts

below, was not done within the prescribed time. It may also be mentioned that it was not argued before us that the rent suit having originally been filed by the Receiver pendente lite, who represented the entire 16 annas interest in the tenure, the suit had been properly instituted, and no question under ss. 15 and 16 of the Act, would, therefore, arise if any devolution of interest took place during the pendency of the suit. For the purpose of determining the present controversy, we proceed on the assumption that the mutation had not been made within six months as prescribed by s. 15, and that this defect affected the entire interest in the tenure in spite of the fact that the two-thirds interest which originally belonged to Satya Jiban's brothers, came to the plaintiffs as a result of the compromise in the partition suit. Section 16 as it stands after the amendment by the Bengal Act IV of 1928, does not impose an absolute bar on the recovery by suit of the arrears of rent. The bar is there only " until the duties imposed upon him (that is, the plaintiffs) by s. 15, have been performed." Now, s. 16 does not speak of any time-limit. It only speaks of the bar to the recovery of the arrears until the performance by the landlord of the duty of giving notice of the succession or getting mutation made on the succession. It was argued on behalf of the appellant that the performance of the duty aforesaid is inextricably bound up with the period of six months, and that the performance of the duty beyond that period, is no performance at all in the eye of law. We are not impressed by this argument, and there are several very good reasons for holding to the contrary. The provisions of s. 15 are meant not only for the benefit of the landlord or of the inferior tenant, but of the intermediate landlords also, that is to say, the provision for notice, or in the alternative, for mutation .of names in the landlord's rent-roll, is meant to protect the interest of the superior landlord in that it ensures payment of his dues by the intermediate landlord before the latter can realise the same from his tenant, in this case, the se-pataidar. Those provisions also ensure that the rightful persons entitled to the durpatni interest, get themselves mutated in the superior landlord's office, so that the inferior tenants may know who their new landlords are as a result of succession to their old landlords. The legislature,, by fixing the limit of six months, intended to indicate that the notice of the mutation should be effected within six months, that is to say, within a reasonable time from the date of the devolution of interest, even as there are similar provisions in respect of the mutation of proprietors in the Collectorate for the purpose of regular realization of public demands. But the legislature did not intend to make it mandatory in the sense that failing to observe the time-limit, the landlord completely deprives himself of his right to receive rent from his tenant, even though otherwise due. That is the reason why, in s. 16, there is no indication of time-limit. On the other hand, there is an indication to the contrary in so far as the last clause quoted above, provides that the bar against the recovery by suit of any rent payable to the holder of the tenure, operates only until he performs the duties imposed upon him by s. 15. Section 16, being in the nature of a penal provision, has to be strictly limited to the words contained in the penal clause, and the penalty should not be extended by implication. If the legislature had intended that the penalty should operate for all times if the duty were not performed within the time specified in s. l5, the legislature would have used the words " within the prescribed time "; or some such words. Instead of laying down such a time-limit, the legislature has, by the amendment aforesaid by Act IV of 1928, made it clear that the bar operates only so long as the duty has not been performed. No authority has been cited before us in support of the extreme proposition that the failure on the part of the landlord to serve the requisite notice or to get the necessary mutation effected within six months, has .-he effect of wiping out the landlord's right to receive rent. There may be rulings to the contrary, but this Court has to resolve the controversy on the language of the relevant sections of the statute, quoted above.

That language does not clearly indicate that the result contended for on behalf of the appellant, must necessarily ensue on his making a default to take those necessary steps within the time specified. The language of the statute is not so peremptory in express terms or by necessary implication. On the other hand, as already indicated the language easily lends itself to the construction that the prescribed time is not in the nature of a statutory bar to the exercise of the landlord's right to recover rent. in this -connection, it has to be remembered that patni tenure and all other subordinate tenures under the patnidar, are permanent tenures. Hence, the relationship of landlord and tenant, continues from generation to generation without there being any necessity of fresh attornment on the death of a durpatnidar or other grades of tenants in the process of sub-infeudation. The relationship is all the time there, only the landlord's record has to be kept up-to-date by making the necessary substitution in the rent-roll or by giving notice of the change in the succession to the landlord's interest. The legislature had to indicate a time by way of laying down the ordinary procedure for taking the steps indicated in s. 15. Six months' period was deemed by the legislature to be a sufficiently long period to enable those steps being taken in the ordinary course of business. But it is not difficult to imagine cases where such steps may not be feasible within the prescribed time. For example, where the landlord dies leaving him surviving only an infant heir without a proper guardian to protect the infant's interest, it may take a considerably longer period than six months to have a proper guardian appointed, if necessary, through court. It may well be that the succession itself is disputed, and the controversy may take some years to get determined finally. It cannot be reasonably suggested that because -the requisite notice or the mutation has not been given or effected within the prescribed period of six months, the landlord's right to recovery` of rent, disappears. That could not have been the intention of the legislature. Again, it may easily be supposed that an honest tenant goes to his new landlord and pays him rent hand to hand, even though there has been no such step taken within the time as contemplated by s. 15. It cannot be said that such a payment of rent out of court, will not be recog- nized by a court, if and when a controversy about such a payment were to arise. In this way instances maybe multiplied where the provisions of s. 15 of the Act, have not been strictly complied with, but still the receipt and

-payment of rent as between the patnidar and his tenant, have continued for a sufficiently long period, to prove what was required to be done under that section. In our opinion, the inference is clear that the provision as regards the time-limit, is not mandatory but only directory, and that transgression of that directory provision has the effect of only delaying the landlord's remedy of recovery of arrears of rent by suit so long as the landlord has not done what he is required by law to do. But that provision has not the effect of absolutely depriving the landlord of his remedy by suit for all times; he may recover through court, of course, subject to the law of limitation. In our opinion, therefore, acceptance of the appellant's arguments would be nothing more than " piling unreason upon technicality", which no, court of justice can countenance. In view of these considerations, it must be held that there is no merit in this appeal which is, accordingly dismissed with costs.

Appeal dismissed.