
(1933) 10 PAT CK 0008
In the Patna High Court

Abay Charan Sekhar Babu and Others APPELLANT
Vs
Ibrahim Mian and Others RESPONDENT

Date of Decision : 10-10-1933

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 84(3)

Citation : AIR 1933 Patna 698

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—In the Record of Rights which was published on 2nd March 1923, the plaintiffs were recorded in respect of a mukarrari tenure in khewats 8/1 to 8/3 at a jama of Rs. 10-8-0 per annum under one Bisessar Babu. They were also recorded in respect of khewats 6 and 7/1 and 7/2 on rents of Rs. 5 and Rs. 3 respectively under the defendants. They sued for a declaration that the latter entry is wrong and that the lands recorded in khewats 6 and 7/1 and 7/2 are in reality part of the lands held by them on a rent of Rs. 10-8-0 under Bisessar Babu and which have been recorded in khewats 8/1 to 8/3. They based their title on a jalsasan sanad dated 12th Asarh 1281 B.S. and on another document of 1285 by which the grant of 1281 was confirmed. By the sanad of 1281 Bisessar granted a chak of waste lands to one Binand Mia, the ancestor of the plaintiffs. The lands were described as lying within certain boundaries. Hasil lands lying within these boundaries were expressly excluded from this grant.

2. The first Court found that in 1281 the chak belonged, in equal shares, to three brothers, namely, the grand-fathers of Bisessar and the defendants Nityananda and Keshab, and that consequently Bisessar had no right to settle all the lands within the chak. The sanad was held to grant only such of the waste lands as belonged to Bisessar and, as the Court was not satisfied that such lands included the disputed lands, the plaintiffs' suit was dismissed. The plaintiffs appealed to the District Judge who reversed the decision of the trial Court. The defendants have preferred this second appeal. The first point that has been raised by the

learned advocate for the appellants is that the decision of the lower appellate Court is vitiated by reason of a misreading of the grant of 1281.

3. It is argued that the learned District Judge appears to have been under the impression that by the grant of 1281 all the lands comprised within the boundaries mentioned in the sanad were granted to the plaintiffs and appears to have lost sight of the fact that the hasil lands were expressly excluded. I have been unable to ascertain from the judgment of the learned District Judge or from the argument that has been addressed by the learned advocate for the appellants that the learned District Judge was under any such misapprehension.

4. The second question raised was with regard to limitation. It is contended that the trial Court had found that the plaintiffs had not been in possession in the way alleged by them within 12 years of suit and unless this finding was reversed by the appellate Court the suit should not have been dismissed. The suits out of which the appeals arise were suits for correction of the entry in the Record of Rights and were instituted within six years of the final publication of the Record of Rights. Such a suit is within time: see *Amiruddin v. Saidur Rahman* (1916) 1 PLJ 73. It is not disputed that the plaintiffs were in actual possession of the lands.

5. The third point taken by the learned advocate for the appellants was that the lower appellate Court has failed to give effect to an admission supposed to have been made by the plaintiffs before the settlement authorities. The trial Court found that the plaintiffs had admitted before the settlement authorities that they held tenures under Nityananda and Keshab, the defendants in the present suit. The appellate Court has declined to act on the alleged admission for the reason that the learned District Judge was not satisfied what statements were actually made by the plaintiffs to the settlement authorities as the only evidence of such statements was contained in the decision of the settlement authorities. Further, on a construction of the alleged admission, the learned District Judge held that there was nothing in the statements made by the plaintiffs to the settlement authorities to indicate that they admitted having no concern with the lands in suit as appertaining to the chak of Bisessar Babu.

6. The evidence of admission was, like other evidence in the suit, a matter whose cogency was for the Court of fact to determine and not a matter of law to be agitated in second appeal.

The next contention of the learned advocate for the appellants was that the learned District Judge was under a misapprehension as to the defence on another point. The question being determined by the learned District Judge was whether the grant by Bisessar Babu was void by reason of the fact that the grant was of lands of which he was not the sole owner. The learned District Judge observed that the suits had not been contested by the defendants on this ground.

7. The learned advocate refers to a sentence in para. 7 of the written statement to the effect that most of the danga lands in the mauza were ijmal, and contends that this raises a question whether Bisessar was entitled to settle all the waste

lands included in the chak. Now, on a reading of the whole of para. 7 of the written statement, it appears that what was there pleaded was that sometime prior to 1281 B.S. the four persons, who were then jointly interested in the mauza, were separately holding possession of some of the lands and that, when any part of the joint jungle lands was cleared, the cosharers held separate possession of their respective shares by realizing rent from the tenants. The matter is made clearer in para. 10 of the written statement.

8. In that paragraph it is stated that so far as the defendants had been able to ascertain, they believed that Bisessar Babu, with a view to increase the area of lands separately held by himself, had caused various deeds to be fraudulently executed: among others the sanad of 1281 and the deed of 1285 B.S. by which the grant of 1281 was confirmed. These two paragraphs make it clear that what the Court of fact had to decide was whether the lands in dispute were included in that part of the mauza which was separately held by Bisessar Babu and, on a consideration of the evidence on that point, the lower appellate Court has come to the conclusion that the disputed lands did fall within the lands held separately by Bisessar Babu and therefore that the plaintiffs were entitled to the declaration sought for.

9. The appeal is therefore concluded by the finding of fact and must be dismissed.

One other point was raised by the learned advocate for the appellants and that was with respect to the manner in which the Court below has dealt with the entry in the Record of Rights. The contention was that the entry being in favour of the defendants its correctness has to be presumed u/s 84, Chota Nagpur Tenancy Act. Clause (3) of that section provides:

Every entry in a Record of Rights so published (that is to say, finally published) shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect.

10. The learned District Judge stated in his judgment that on a consideration of the evidence on both sides he was satisfied that the plaintiffs had proved their right to the lands in suit and that they held the same as part of their tenure on a rental of Rs. 10-8-0 and that consequently the entry in the Record of Rights to the contrary was wrong. The contention of the learned advocate is that this finding is vitiated by reason of the fact that the learned District Judge states that he was satisfied with regard to the plaintiffs' title on a consideration of the evidence on "both sides" whereas under Clause (3), Section 84, the learned District Judge was not entitled to hold an entry in the Record of Rights rebutted unless he was satisfied of its inaccuracy by the evidence adduced on behalf of the plaintiffs only.

11. In other words, the contention of the learned advocate is that in Sub-section (3), Section 84, the words "by evidence" should be read as if they were "by evidence of the person challenging the entry." No authority was recited for this novel proposition and I see no reason to accede to the argument. The result is

that the appeals are dismissed with costs to the respondents throughout.