
(1955) 05 PAT CK 0003
In the Patna High Court
Case No : A.F.O.D. No. 478 of 1947

Abdul Gaffar and Others

APPELLANT

Vs

Pirthvi Chand Lal Choudhary and Others

RESPONDENT

Date of Decision : 05-05-1955

Acts Referred:

Bihar Tenancy Act, 1885 — Article 2
Limitation Act, 1908 — Article 116, 29

Citation : AIR 1955 Patna 430 : (1955) 3 BLJR 389

Hon'ble Judges : Rai, J;Choudhary, J

Bench : Division Bench

Advocate : K.C. Sanyal and Shamshul Huda, for the Appellant; S.C. Mazumdar, Ajit Gopal Ray, N.N. Ray and K.D. Chatterji, for the Respondent

Final Decision : Dismissed

Judgement

Rai, J.—The plaintiffs instituted the present suit for recovery of rent due from the holder of a patnitenure for the years 1348 to 1357 Mulki Sambat.

2. According to the plaintiffs, they were entitled to realise rent for 6 annas 8 3/4 pies share,, and the defendants second and third parties were entitled to realise rent for the remaining share; but as defendants second and third parties had not intimated to the plaintiffs whether any rent was due to them or not, they were joined as defendants second and third parties. In the relief portion of the plaint the plaintiffs not only claimed arrears of rent due to them, but they also prayed that if the defendants second and third "parties give any account of their dues, decrees may be passed in respect of their dues also on payment of proper court-fee. They further prayed that in case the rent due towards the share of the plaintiffs be found to have been realised by defendants second, third and fourth parties, then a decree in favour of the plaintiffs may be passed against those defendants.

3. The suit was contested by the defendants first party who pleaded, inter alia, that the suit was barred by limitation. .

4. The trial court held that the suit would be governed by the provisions of Schedule 3, Article 2 of the Bihar Tenancy Act which would render the claim for the years 1348 and 1349 not recoverable as having become barred on the date the suit was instituted. The suit was, therefore, decreed in part for the arrears of the remaining years. The - plaintiffs thereafter came up in appeal before this Court.

5. Learned Counsel for the plaintiffs-appellants contended before us that the court below has erred in law in holding that the present suit would be governed by Schedule 3, Article 2 of the Bihar Tenancy Act. He submitted that the Patni lease in the present case was merely a lease for collection of rent, and -hence it was not lease governed by the provisions of the Bihar Tenancy Act. Mr. Sanyal submitted that the six years" law of limitation would apply under Article 116, Limitation Act. In support of his contention he relied on the decisions in the cases of -- Humayun Reza Chaudhury and Others Vs. Tarini Charan Tewari and Others, ; -- Haji Sheikh Muhammad Hasan Khan and Another Vs. Sheikh Muhammad Akhtar hasan Khan and Another, ; -- Maheshwari Prasad Varma Vs. Dulhin Manrajo Kuer, and -- "Jang-dhari Singh v. Badri Narayan Singh 1939 Pat WN 220 .(D). Mr. Sanyal also relied on the decisions in the cases of--- "Jagannath v. Mohiuddin Mirza 37 Cal 747 (E); -- Munshi Alauddin Ahammed Choudhury and Others Vs. Tomizuddin Ahammed, and -- "Tricomdas Cooverji Bhoja v. Gopinath Jiu Thakur", AIR 1916 PC 182 (G).

6. The learned Counsel for the defendants first party respondent, on the other hand, contended that a patni tenure has .always been held to be governed by the provisions of the Bengal Tenancy Act, either for the purpose of applying the period of limitation in a suit for arrears of Patni rent or for other purposes to which the provisions of the Bengal Tenancy Act applied. In support of his contention he relied on the decisions in the cases of -- "Durga Prosad Bundopadhya v. Brindabun Roy 19 Cal 504 (H); -- "Burma Moyi Dassee v. Burma Moyi Chowdhurani 23 Cal 191 (I); -- Shaikh Abdul Gaffar and Others Vs. F.B. Downing and Others, ; -- Raja Pirthvi Chand Lal Chaudhury and Others Vs. Rani Prabhabati Ji Saheba and Others, ; -- (Moulvi) Wazed Ali Khan Panee and Another Vs. Brojendra Kumar Bandopadhaya and Others, and -- Uday Chand Mahatab Vs. Dibakar Sen and Another, . He submitted on the strength of these decisions that the Court below had rightly held that the claim for 1348 and 1349 had become barred by limitation on the date the present suit, was instituted.

7. I agree with Mr. Mazumdar that the present suit will be governed by the provisions of Schedule 3, Article 2 of the Bihar Tenancy Act. In 19 Cal 504 (H) it was held that the provisions of the Bengal Tenancy Act would apply to patni tenures unless their applicability came within the restriction imposed by S. 195(e) of the Bengal Tenancy Act. In that case, it was held that Sections 15 and 16 of the Bengal Tenancy Act applied to patni tenures. This case was followed by a Division Bench of this Court in Shaikh Abdul Gaffar and Others Vs. F.B. Downing and Others, . The relevant portion of the judgment of Jawala Prasad . J.

with whom Bucknill J. had agreed ran as follows:

"The Patni Regulation, gives to the Zamindar the right to realise the rent by a summary procedure and that summary procedure is restricted only to periodical rents. But the Zamindar is not bound to realise his rent every six months. He can wait for a longer period, and if does wait for a longer period he can proceed under the general law for the realisation of his rent. Section 195 (e) of the . Bengal Tenancy Act says that the Bengal Tenancy Act would not apply to enactments relating to Patni tenures in so far as it relates to those tenures. Where the Patni law is silent, the pro-. , visions of the, general rent law would apply. This has been settled by authorities. The Patni law is silent as to the realisation of rent beyond one year and therefore the Zamindar is entitled to bring his suit under the ordinary rent law."

Thus, this decision held that apart from the provisions of the Patni Regulation for periodical realisation of patni rent, the zamindar could wait longer and realise arrears in accordance with the provisions of the Tenancy Act. Their Lordships of the Calcutta High Court also have held in Uday Chand Mahatab Vs. Dibakar Sen and Another, that the suit for arrears of rent of a Patni tenure would be governed by Schedule 3, Article 2 of the Bengal Tenancy Act. In a later Full Bench decision of this Court in Raja Pirthvi Chand Lal Chaudhury and Others Vs. Rani Prabhabati Ji Saheba and Others, also it has been held that both the Patni Regulation of 1890 and" the Bengal Tenancy Act, 1885, existed side by side and each of them has its own provisions relating to the realisation of rent in respect of a Patni tenure, and a zamindar is at liberty to proceed either under the one or the other for the purpose of recovering arrears from the defaulting patnidar. Thus on the authority of the decisions of the Calcutta High Court and of this Court as mentioned above, it is clear that the provisions of Schedule 3, Article 2 of the Bihar Tenancy Act will apply to the present suit, It is true that in Humayun Reza Chaudhury and Others Vs. Tarini Charan Tewari and Others, a learned " Single Judge of this Court had. held that in a suit for recovery of arrears of Patni rent six years" rule of limitation as provided by Article 116, Limitation Act would apply; but it appears that the decision in Shaikh Abdul Gaffar and Others Vs. F.B. Downing and Others, was not placed before his Lordship. With great respect, I do not agree with him that a suit for arrears of Patni rent would be governed by Article 116, Limitation Act. In the other decisions cited by Mr. Sanyal, such as. Haji Sheikh Muhammad Hasan Khan and Another Vs. Sheikh Muhammad Akhtar hasan Khan and Another, ; and Maheshwari Prasad Varma Vs. Dulhin Manrajo Kuer, it was held that the tenure in respect of which arrears of rent had been sued for was governed by the Transfer of Property Act and. not by the Bihar Tenancy Act. Hence, in those cases it was held that the provisions of Schedule 3, Article 2 of the Bihar Tenancy Act would not apply. The two Calcutta cases, namely Munshi Alauddin Ahammed Choudhury and Others Vs. Tomizuddin Ahammed, were not followed in later decisions of the Calcutta High Court "itself. With great respect I agree with the view taken by the learned Judges of the Calcutta High Court who held that the suit for arrears of rent of Patni tenures

would be governed by the provisions of the Bengal Tenancy Act. In AIR 1916 PC 182 (G) their Lordships of the Judicial Committee were considering a lease which was not governed by the provisions of the Bengal Tenancy Act. Hence any observation made in that Judgment will not be applicable in the present case.

8. In my view, the court below has rightly held that the claim for Patni rent for the years 1348 and 1349 Mulki Sambat was barred on the, date the present suit was instituted.

9. The result is that the appeal fails and is dismissed with costs.

Choudhary, J.

9. I agree.