
(1948) 03 PAT CK 0002
In the Patna High Court

Baburam Mahto and Others

APPELLANT

Vs

Girish Nandan Singh and Another

RESPONDENT

Date of Decision : 03-03-1948

Acts Referred:

Bihar Tenancy Act, 1885 — Section 112A(c), 112A(d)

Citation : AIR 1949 Patna 459

Hon'ble Judges : Sinha, J;MahabirPrasad, J;Mahabir prasad, J

Bench : Full Bench

Judgement

Sinha, J.—This is a defendants' second appeal from the decision of the learned Additional Subordinate Judge of Muzaffarpur modifying that of the Munsif of Sitamarhi in a suit for arrears of rent.

2. The plaintiff claimed rent for the years 1348 to 1351 Fasli at the rate of Rs. 44-2-6 in respect of a holding of 6 bighas 2 dhurs in Khata No. 11 of village Jahangirpur. The plaintiff alleged that the original rent of the holding was Rs. 32 and odd which was later on enhanced to Rs. 44 and odd as claimed.

3. Defendant 1 filed a separate written statement contending that the holding bore a rental of Rs. 6-8-0 only, and that a moiety share in the holding had been sold to defendant 7 who had been recognized by the landlord who had split up the rents payable in respect of the two portions of the holding separately. Defendants 2, 4 and 5 filed a separate written statement alleging that they had sold their interest to the defendant-second-party, and had, therefore, no connection with the holding in question. Hence, it was contended that the suit as framed was not maintainable, and that, at any rate, the plaintiff had made a very exaggerated claim. The defendants also alleged that, as a result of rent reduction proceedings, the original rent of Rs. 6-8-0 had been reduced to Rs. 6-6-0.

4. Hence, in the trial Court, several issues were joined between the parties, of which the issue as regards the annual rent payable by the tenants was the only material issue in controversy between the parties in this Court. The trial Court

held that, by virtue of the compromise as evidenced by Ex. 1, the rental of the holding was fixed at Rs. 5 per bigha; but relying upon the sale deed of the year 1901 (EX. 2) which mentioned the annual rent of Rs. 26 for the transferred portion, which was the portion in suit in this case, it granted the plaintiff a decree at the rate of Rs. 26 per year besides cesses. On appeal by some of the defendants, the lower appellate Court came to the conclusion that the rent of the holding should be fixed at the rate of Rs. 5 per bigha in accordance with the compromise referred to above. Hence, it held that the rent payable should be Rs. 25-6-0 besides cesses, and not Rs. 26 as held by the learned Munsif. With this modification the lower appellate Court dismissed the appeal.

5. In this second appeal, learned Counsel for the appellants has contended that the result of the rent reduction proceedings as evidenced by Ex. c, showing that the rent of Rs. 6-8-0 had been reduced to Rs. 6-6-0 from 1348 for ten years under Clause (c) of Section 112A, was binding on the parties, and that, therefore, the suit should not have been decreed for any sum in excess of the rent fixed by the rent reduction officer. Hence, the only question to be determined in this appeal is whether the result of the rent reduction proceedings is binding on the parties. In this connection it is necessary to state certain facts which have been brought out in the judgments of the Courts below. The original holding, Khata No. 11, consisted of a very large area as shown in the record-of-rights during the closing years of the last century. The rent worked out at about Rs. 5 per bigha. A portion of that original holding as recorded in the record-of-rights was transferred to the defendants-first-party by virtue of the sale-deed (Ex. 2) of the year 1901 which contains the recital that the rent of the portion transferred was Rs. 26. In the litigation of 1925, there was a compromise in which it was agreed by the tenants that the rent shall be calculated at the rate of Rs. 5 per bigha. It is on the basis of this compromise, petition Ex. 1 (a), that the lower appellate Court has held that the rent for 5 beghas 1 Katha 10 dhurs at Rs. 5 per bigha comes to Rs. 25-6-0, and not Rs. 26. But it appears from the judgment of the trial Court that the suit is in respect of 8 bighas and 2 dhurs, and, if that area has been correctly mentioned, as prima facie it is so as found on reference to the plaint, the jama should be a little over Rs. 30. But, as there is no cross-objection on behalf of the plaintiff-landlord, this apparent discrepancy in the judgment of the lower appellate Court need not detain us. Both the Courts below have inferred from the documentary evidence that rent was paid for the holding in question at the rate of Rs. 5 per bigha. But it appears that an application was made u/s 112A(d) on the ground of fall in prices for reduction of rent of the holding, alleging that the original rent of the holding was only Rs. 6-14-0 including cesses. With reference to Ex. c, it appears that Baburam Mahto, one of the defendants-appellants, made an application for reduction of rent of a holding in Khata No. 11 consisting of plots 1085,688, etc., with an area of 6.07 acres bearing an annual rent of Rs. 6-8-0. On that application, the Rent Reduction Officer reduced the rent to Rs. 6-6-0 for a period of ten years with effect from 1348 Fasli under Clause (c) of Section 112A, Bihar Tenancy Act. The

lower appellate Court has held the orders of the Rent Reduction Officer to be without jurisdiction on three grounds, namely, (1) that reduction under Clauses (a) to (d) of the section can be made only on an application by the tenants concerned, and cannot be made suo motu by the Rent Reduction Officer except when there is a notification by the Governor directing the settlement of rent in any particular area, (2) that that officer had no jurisdiction to make a reduction under oh (c), when the application was made under Clause (d) and on grounds contemplated in that clause, and (3) that the Rent Reduction Officer purported to reduce the rent of an imaginary holding from Rs. 6-8-0 to Rs. 6-6-0. It was admitted in the lower appellate Court that there was no such notification as would justify the Rent Reduction Officer reducing the rent suo motu under any one of the provisions of Section 112A. But it has rightly been pointed out on behalf of the appellants, and not disputed on behalf of the respondents, that on 24th August 1938, there was such a notification as appears from the official gazette of that date. Hence, the first ground taken by the Courts below for not acting upon the orders of the Rent Reduction Officer is not well-founded in fact. Similarly, the second ground also of the decision cannot be sustained. Once jurisdiction is found to exist in a Court, it is open to the Court to decide rightly or to decide wrongly, and, if the Rent Reduction Officer decided to reduce the rent under Clause (c) of the section, and not under Clause (d) as applied for by one of the tenants, it cannot be said that such a decision is ultra vires.

6. But the third ground of decision, in my opinion, is well-founded in law. The Rent Reduction Officer purported to decide the rent of a, holding which in fact did not exist as found by the lower appellate Court. The holding in question is one having an area of 5 bighas 1 katha 10 dhurs bearing a rental of Rs. 5 per bigha per year, that is to say, Rs. 25-6-0 as calculated by the lower appellate Court. The application filed before the Rent Reduction Officer was in respect of a holding of 6.07 acres whose "existing rent" was alleged to be Rs. 6-8 0. It has been rightly observed by the learned Subordinate Judge that a very significant statement was made in the petition by the tenant for reduction of rent that the landlord was demanding rent much in excess of the jama mentioned in the barwarda, and never granted any receipts specifying the area and the jama, and that the reduction should be made in the rent after fixing the jama. It has been pointed out by the lower appellate Court that the barwarda makes reference to a jama which roughly amounts to Rs. 1-6-0 per bigha, and is really the rent payable by the plaintiff himself, who is the mukarraridar, to his superior landlord, the proprietor, and that the jama payable by the raiyat to the plaintiff was really Rs. 5 per bigha. It has been argued by learned Counsel for the appellants that it was for the landlord respondent to have raised the question before the Rent Reduction Officer as to the real jama of the holding in question. That argument presupposes that the Rent Reduction Officer had been vested with authority to determine the basic rent of the holding which was sought to be reduced. In other words, the question is: Had the Rent Reduction Officer the jurisdiction to decide the question of the correct jama of a particular holding in the event of there

being a real dispute between the parties as regards the annual rent payable, or actually paid, in respect of the holding. As held by both the Courts below, the tenant-defendants had failed to prove that Re. 1 per bigha was the rent payable, or actually paid, in respect of a holding of 6.07 acres as shown in the rent reduction schedule. It appears that there is a real discrepancy between the area and jama as set forth in the rent reduction schedule and the area and jama of the holding in question in this case. We have not been referred to any provision in Section 112A which authorizes the Rent Reduction Officer to determine the basic rent of a holding, and then to determine the further question of how much reduction should be given. In my opinion, the Rent Reduction Officer has been vested with summary powers to determine the question of the quantum of reduction a particular tenant is entitled to, there being no controversy as regards the rental or rate of rent borne by that particular holding. In this case, as found by the Courts below, the tenant-defendants, or one of them, alleged that the rent payable by the plaintiff to his superior landlord was more than the rent payable by the defendants to the plaintiff himself. That was a controversy which, in my opinion, could not have been entertained and determined by the Rent Reduction Officer, and he has not even purported to do so. But it has been argued by counsel for the appellants, on the authority of the decision of a Pull Bench of this Court, of which I was a member, in *M.B. Ram Ran Bijoy Prasad Singh Vs. Ramagya Kuer and Others*, , that the principle of constructive res judicata applies to proceedings u/s 112 A, Bihar Tenancy Act. That may or may not be so. But, unless a Court has been vested with jurisdiction to decide a certain matter, the decision of that Court, actual or constructive, cannot attract the operation of the rule of res judicata. If the Rent I Reduction Officer had been vested with authority, which ordinarily vests in the civil Courts, to determine a controversy of that nature, certainly his derision would have operated as res judicata. But in the present case I do not find any justification for the contention that the Rant Reduction Officer was competent to determine the controversy as regards the basic rent of the holding in question. Reliance was also placed upon a Division Bench ruling of this Court in *Prabhu Missir Vs. Dome Mahto*, , to which I was a party. In that case, this Court laid it down that under the provisions of Section 112A(1)(a) the Rent Reduction Officer had jurisdiction to decide the question whether or not there had been an enhancement u/s 29, Bihar Tenancy Act. That decision, in my opinion, is of no assistance to the appellants for the simple reason that the Rent Reduction Officer had been vested with powers to reduce the rent of a holding on any one of the grounds contemplated in that section, but had not been vested with authority to determine the further question of what was the actual rent of the holding in question. For the reasons given above, it must be held that the order of the Rent Reduction Officer did not operate upon the holding in controversy in this suit, It must, therefore, be held that the decision of the Courts below is substantially correct, and that there is no error of law in their decision.

7. The appeal must accordingly be dismissed with costs.

MahabirPrasad J.

I agree.