

(1919) 06 PAT CK 0014

In the Patna High Court

Balak Mahton and Another

APPELLANT

Vs

Mathura Ram Dubey and Others and Rajani Kanta Ram
Dubey and Others
 Padarath Misser Vs Mathura Prasad
Ram Dubey and Others and Rajani Kanta Ram Dubey and
Others

RESPONDENT

Date of Decision : 13-06-1919

Acts Referred:

Land Registration Act, 1876 — Section 78

Citation : 52 Ind. Cas. 267

Hon'ble Judges : Atkinson, J

Bench : Single Bench

Judgement

Atkinson, J.—The plaintiffs sue to recover from the defendants Nos. 1, 2 and 3 rent on the Danabandi system for the years 1320 and 1323. The plaintiffs are four in number and are co-sharers, as landlords, in respect of the lands in suit. Pro forma defendants Nos. 4 and 5 are the other co-sharer landlords of the plaintiffs. It is stated as between the respective landlord co-sharers that the collection of their respective shares of the rent has been separated.

2. The main argument advanced by the defendants why the plaintiffs should not succeed in obtaining a decree for the rent claimed in this suit is that the plaintiffs were not at the time of the institution of the suit registered in the Collectorate under the provisions of Section 78 of the Land Registration Act

3. Section 78 of the Land Registration Act provides: "No person shall be bound to pay rent to any person claiming such rent, unless the name of the person claiming the rent shall have been registered under the Land Registration Act."

4. The defendants contend that the plaintiffs were not duly registered in accordance with the provisions of the Land Registration Act prior to the institution of this suit.

5. This point was suggested before the learned Munsif who tried the case; but I

gather from the form of his judgment that it was not seriously pressed in argument before him.

6. However in the lower Appellate Court a different attitude was adopted by the defendants and the point as to non-registration of the plaintiffs as the recorded proprietors in the Collectorate prior to the institution of the suit was strenuously pressed before the learned District Judge.

7. Up to the time that the Munsif granted a decree for rent claimed in favour of the plaintiffs as against the defendants, the plaintiffs were not registered in accordance with the requirements of the Land Registration Act. Therefore the learned Munsif in my opinion ought not to have awarded the plaintiffs a decree.

8. The plaintiffs and the defendants respectively appealed to the learned District Judge, and pending the determination of the appeal the plaintiffs complied with the provisions of Section 78 of the Land Registration Act and had themselves recorded as proprietors of the lands in suit in the Collectorate.

9. The learned District Judge was of opinion that non-registration was not a disqualification which in point of law would be deemed to deprive the plaintiffs of a cause of action; but that it was merely an impediment against their right to recover the rent they claimed by a decree until the provisions of the Registration Act were complied with, and that thus inasmuch as the plaintiffs prior to the appeal to the District Judge were duly registered and recorded as proprietors of the lands in suit that, therefore, they were entitled to the benefit of a decree from the learned District Judge, if the facts otherwise justified a decree being granted in their favour.

10. With the view I agree. It appears to me that the law on this point is covered by express authority which will be found in the rulings reported in *Alimuddin Khan v. Hira Lal Sen* 23 C. 87 (F.B.) : 12 Ind. Dec. 59, *Abul Khair v. Meher Ali* 26 C. 712 : 13 Ind. Dec. 1055, *Pramada Sundari Debi v. Kanai Lal Shaha* 27 C. 178 : 14 Ind. Dec. 117 and *Belchembers v. Nawab Sir Syed Hussan Ali* 2 C.W.N. 493, and in addition there appears to me to be an authority in this Court to support the contention that even after the trial Court has granted its decree, it would be open to the landlord seeking to recover rent to comply with the terms of Section 73 of the Land Registration Act and to have his name recorded so as to be entitled to a decree from the Appellate Court even though the decree of the trial Court may have been illegal. The ruling reported as *Narayan Prosad v. Gajo Mahton* 42 Ind. Cas. 838 : 2 P.L.J. 701 : 2 P.L.W. 181 appears to me to lead to this conclusion in point of law.

11. I agree with the learned Judge in thinking that the learned Munsif should not have awarded the plaintiffs a decree in this case. The learned Judge was justified in appeal in granting the plaintiffs a decree, the plaintiffs having complied with the law as to registration.

12. This disposes of the main contention addressed to me on the part of the

defendants-appellants.

13. It is conceded that on the question of payment no point can arise in second appeal; the finding of fact by the learned Judge that no payment of rent was in fact made by the tenants is a conclusive finding of fact by which I am bound.

14. The rent claimed by the plaintiffs for the years in suit is a rent according to the Danabandi system. The rent has since been commuted into a cash rent; but prior to the institution of the suit the Danabandi system prevailed, and applies to the years for which rent is sought to be recovered.

15. Both the trial Court and the first Court of Appeal were unable to assess the value of the crop owing to the crop having been ant and removed by the defendants, and consequently means did not exist of actually appraising the value of the crop as between the plaintiffs on the one hand and the defendants on the other; and, therefore, both the Courts adopted the system of taking an average between the figures stated by the plaintiffs and by the defendants respectively as to the actual value of the crop as the basis upon which the plaintiffs should be entitled to recover the rent due. Strictly speaking, in point of law I think this was an erroneous method for the Courts to have adopted; but it is difficult to see what either of the Courts could have done; having regard to the fact that the crop which required to be appraised had been removed by the defendants rendering the appraisement impossible by reason of their conduct, which conduct might amount to a criminal offence under certain conditions. I do not think the plaintiffs should" be allowed to suffer by reason of the wrongful conduct of their tenants; and" Section 71, sub-section 4, of the Bengal: Tenancy Act seems to me to contemplate that where tenants do remove a crop without having the same properly appraised that the presumption arises against them and the landlord is entitled to the full measure of the crop as of the best" crop in the neighbourhood of a similar character for that harvest. This system" of valuation was not adopted by either of the Courts below; as I have pointed out, the average was applied. The result no doubt is probably fair and reasonable as between the parties; but it would be quite senseless and futile to remand the case for further consideration as to the value of the crop, inasmuch as the crop has long ceased to exist and no good can be gained by any attempt to remand and re-open the case now for further consideration.

16. Accordingly I will dismiss these appeals but without costs owing to the very defective way in which the plaintiffs presented their case in these appeals.