

(1947) 09 PAT CK 0023
In the Patna High Court

Basdeo Narain Choudhury and Others	APPELLANT
Vs	
Karu Mahton and Others	RESPONDENT

Date of Decision : 16-09-1947

Acts Referred:

Bihar Tenancy Act, 1885 — Section 104B, 104E, 188

Citation : AIR 1948 Patna 153

Hon'ble Judges : Sinha, J; Mukharji, J

Bench : Full Bench

Judgement

Mukharji, J.—This is plaintiffs' second-appeal. They brought Title Suit No. 65 of 1942 in the Court of the Munsif of Bihar for a declaration that the order of reduction of rent of a certain holding of 23.62 acres held by the defendants under them was void and without jurisdiction. There was also a claim for arrears of rent for the years 1347 to 12 annas kist of 1349. Previously there was a suit by the plaintiffs-against the defendants for arrears of rent in respect of the years 1344 to 1346. In that suit the claim of the plaintiffs was reduced in accordance with the order passed by the rent Reduction Officer. The claim of the plaintiffs in Title Suit No. 63 of 1942 also included an amount which represented the difference between the khatian jama and the reduced rental so far as these three years, namely, 1344 to 1346, were concerned. The suit was contested by the defendants on the ground that the order of the Rent Reduction Officer was perfectly valid and that the plaintiffs had no cause of action.

2. Before I proceed further, I may mention, that the annual jama of the holding besides cess was Rs. 250. The amount of cess payable annually was Rs. 3-12-0. From Exs. E and E-I, the rent schedules, it appears that the rental was first reduced to Rs. 142-6-0 and then to Rs. 124-7-0 The first reduction was under Clause (c) of Section 112A, and the second under Clause (d) of the same section. The learned trial Court gave a decree to the-plaintiff s according to the reduction made under Clause (c). Both the plaintiffs and the defendants appealed against the judgment of the learned Munsif. At page 19 of the Paper Book the

learned Additional Subordinate Judge who heard the appeal and the cross-objection observed as follows :

Under such circumstances, I do not quite understand why the trial Court ignored the reduction under Clause (d) and allowed the decree at the reduced rate according to Clause (c) alone. I would, therefore, allow the cross-objection and order that the reduction under Clause (d) will also be available to the respondents.

The learned Additional Subordinate Judge thus allowed the cross-objection and dismissed the appeal.

3. A few facts need be stated here for a proper appreciation of the respective cases of the parties. The holding in question is held by as many as 24 tenants, and there are no fewer than 34 landlords. It is the admitted case of the parties that the application for reduction of rent was made only by Karu Mahton, one of the tenants. It is also an admitted fact that out of the large body of landlords only two were impleaded. These two are Basdeo Chaudhury and Kasi Chaudhury. According to the plaintiffs (vide para, 4 of the plaint--pp. 3-4 of the Paper-Book) Gopi Mahto and Paryag Mahton, two of the recorded tenants of the holding, are still alive. It was also the case of the plaintiffs that the heirs of some of the other recorded tenants are alive. The main ground upon which the order of the Revenue Officer reducing the rental was challenged as having been passed without jurisdiction is that all the landlords and tenants concerned were not made parties to the rent reduction proceedings. The case of the defendants, on the other hand, was that only Karu Mahto filed the application for reduction as, so it was said, Karu Mahto represented the other tenants. As for the allegation in the plaint that out of so many landlords only two were impleaded, the case of the defendants was that these two looked after the affairs of the entire body of landlords, and as such were impleaded in their representative capacity. Both the Courts -below have held that there was representation and they upheld the order of the Rent Reduction Officer.

4. On behalf of the plaintiffs-appellants it has been contended that the learned Courts below were wrong in their view that only one tenant represented all the tenants whose names find mention in the Survey Record-of-Eights. Similarly, it was also contended that there was no justification for the finding that only two landlords represented the entire body of landlords in this case.

5. On behalf of the "respondents it was argued that the question of representation is one of fact, and as such cannot be gone into in second appeal. The question of representation came up for consideration in the case reported in *Chamatkarin Dasi v. Triguna Nath* 17 C.W.N. 833. A Division Bench of the Calcutta High Court presided over by Jenkins C.J. held that where one of a number of tenants is put forward by the rest as their representative he can be regarded as the sole tenant for the purposes of a suit for arrears of rent within chap. 14, Ben. Ten. Act. Their Lordships further held that whether one of several

tenants can be regarded as representative of the rest must depend on the circumstances of each case, and is largely, if not essentially, a question of fact. In *Shyam Sunder Naik and Others Vs. Gobardhan Kamti and Others*, , a Division Bench of this Court has held, whether one or several cotenants can be regarded as a representative of the rest is a question of fact and depends on the circumstances of each case. Dealing with the case as to whether Karu Mahto represented all the tenants of the holding, the learned first appellate Court has observed as follows:

But the defendants have filed rent receipts (Exs. 1 series) to show that Karoo Mahton alone was recorded in the malik's sharista and all the rent receipts were granted in his name alone.

6. All the recorded tenants appear to be of the same family. Therefore, one need not be surprised that only one of them represented the rest. The fact that in the rent receipts the name of Karu Mahto alone finds mention goes to show that the landlord accepted Karu as representing the entire body of tenants recorded in the Survey Record of Rights. In *Beradar Singh v. Bacha Mahto* AIR 1920 Pat. 204, it was held that where five persons are entered in the record-of-rights as the tenants of a certain land a rent decree cannot be obtained in a suit against only one of them. In that case one Chatarpati Mahto was alleged to be the karta of the family, and as such entitled to act on behalf of the other recorded tenants. This was not proved and so it was held that no rent decree could be passed. In the case with which we are concerned it was alleged by the defendants that Karu Mahto was acting on their behalf. Karu Mahto is thus put forward by the remaining tenants as their representative. This representative capacity of Karu Mahto also appears to have received the sanction of the landlords, because one finds that the receipts granted by the landlords show the name of Karu Mahto alone as the tenant. The genuineness of the receipts has not been called in question. One can, therefore, safely take it that in the sherista of the landlord also the name of the tenant is Karu Mahto. All things considered, therefore, I can have no hesitation in holding that the representative capacity of Karu Mahto was well proved in this case. As for the contention that the question of representation is one of fact, I may observe that it is rather a mixed question of fact and law and not one which is purely of fact. This is borne out by the ruling reported in *Chamatkarin Dasi v. Triguna Nath* 17 C.W.N. 833 above referred to where it has been held that such a question is largely, if not essentially, a question of fact. Their Lordships in *Chamatkarin Dasi v. Triguna Nath* 17 C.W.N. 833 did not say that such a question is purely one of fact. The decision reported in 17 Calcutta Weekly Notes has been approvingly referred to in *Shyam Sunder Naik and Others Vs. Gobardhan Kamti and Others*, .

7. The question next is whether two of the landlords really represented the whole body of landlords in this case, The learned Additional Subordinate Judge thought that because these two landlords were in charge of collection and managed the affairs on behalf of all the land lords, therefore, it can very well be said that they

represented all the landlords recorded in respect of the tenure in question. No power of attorney of any kind has been proved in this connexion. Besides, one finds that the plaintiffs are of different castes and of different places. They seem to have very little in common.

8. In such circumstances I do not see how it can be held that only two of the landlords represented the entire body of them. The Board of Revenue has framed certain statutory rules and instructions under the Bihar Tenancy Act for the guidance of Revenue Officers acting under the provisions of the said Act. Admittedly in the present case the reduction of rent was effected in accordance with the provisions of Section 112A, Bihar Tenancy Act. Rule 115 under Chap. 7B of the Rules framed by the Board of Revenue is important. According to this rule when the Governor has issued a notification under Sub-section (1) of Section 112A directing that a settlement of the rents of the occupancy holdings situated in any area or of any class or classes of occupancy holdings situated in any area shall be made, the Collector shall serve a notice by proclamation and beat of drum and by posting it in the presence of not less than two persons in some conspicuous place in each village in the area specified in such notification. The rule goes on to describe what the form of the notice will be and what it must state. Such notice is to be served at least one month previous to the date fixed for settlement of rents. Under Rule 117, an ex parte order can be passed by a Revenue Officer who is to settle such rents u/s 112A; but Rule 117 has got a proviso which is important. This proviso lays down that where the parties have not attended in compliance with the notice served under Rule 115, the Collector shall serve on each person interested a special notice. The proviso is also to the effect that no rent shall be altered in the absence of such parties until after the service of such special notice has been proved. The underlying object of the rules is quite clear; it is that before the rent of a holding is proposed to be altered to the prejudice of any party it should not be done until that party had notice of the rent settlement proceedings. This is quite in accord with the fundamental principle of law that before an order is passed affecting any person that person should be given an opportunity to be heard.

9. In the present case there were no less than 34 landlords, but notice was served on only two of them. There is no evidence to show that these two latter had any valid authority to represent the entire body of landlords. The remaining 32 landlords had every right to be served with a notice so that if they chose, they could contest the proceedings. In the case reported in *Mohammad Yunus Vs. Bishunath Singh*, , a husband was the proprietor of ten annas eight pies milkiat while his wife was the usufructuary mortgagee of the remaining milkiat. No notice of the rent reduction proceedings was served on the wife and she was not made a party to those proceedings. It was held by Beever J. that the order passed by the Revenue Officer for a reduction of rent was without jurisdiction. On behalf of the respondents a reference has been made to the case in *Syed Mohammad Yasin Vs. Tara Mahton and Others*, . Their Lordships, Fazl Ali C.J. and Imam J. were considering Section 104B, Bihar Tenancy Act. The appellant before

their Lordships had withdrawn his objection, and the Settlement Officer dealt with the matter u/s 104E. The proviso to Section 104 E states that no revision of an entry in a settlement rent roll shall be made until a reasonable notice has been given to the parties concerned to appear and be heard in the matter. Their Lordships observed that it was not established to their satisfaction that this proviso was not complied with. Imam J. who delivered the leading judgment next went on to observe that even assuming that the Settlement Officer revised the rent settled by the Assistant Settlement Officer without giving an opportunity to the parties to appear and be heard, it would at best be a case of exercising jurisdiction illegally and not a case of acting without jurisdiction. The learned Judge then went on to refer to the cases reported in Central Co-operative Bank Ltd. Vs. Dasrath Pandey, and Sreekant Lal Vs. Ajodhya Singh and Others, respectively. The observations of their Lordships just referred to were in the nature of obiter dicta. Besides, their Lordships were not considering the implications of the rules framed under the Bihar Tenancy Act. In my opinion the Revenue Officer who reduced the rent in this case acted without jurisdiction when he passed order in the presence of only two out of 34 landlords interested in the land in question.

10. A point that was taken on behalf of the landlords is that the suit of the plaintiffs-appellants was barred by the principle of res judicata. Exhibit C is a certified copy of judgment in Rent Suit No. 3811 of 1939 brought by the present appellants against the present respondents. In that suit also the main point for consideration was whether the jama was Rs. 250 as claimed by the appellants, or it was less as claimed by the respondents. The learned Munsif by his judgment dated 15th May 1940 decreed the suit of the plaintiff at the reduced jama. It is contended on behalf of the defendants-respondents that this judgment should operate as res judicata because the plaintiffs did not go up in appeal against it. Certain papers were proved on behalf of the plaintiffs-appellants to show that they contested the legality of the order passed by the Revenue Officer first before the Collector, then before the Commissioner and finally before the Board of Revenue. Exhibit D-2 is a certified copy of the decision of the Commissioner, while Ex. D-3 is a certified copy of the order of the Board of Revenue. The date of Ex. D-3 is 22nd November 1941. It would appear that after they had failed to obtain a favourable order from the Board of Revenue the plaintiffs-appellants filed their title suit in the Court of the Munsif at Bihar on 21st May 1942. No question of res judicata thus falls to be considered in this case.

11. As I have held above that the order of the Revenue Officers is without jurisdiction, the appeal of the plaintiffs-appellants must be allowed, and it is allowed accordingly. There is a cross-objection by the defendants-respondents. It appears that although the claim was for 1347, 1348 and 12 annas kist of 1349, the learned Additional Subordinate Judge, through inadvertence, no doubt, decreed the suit for the entire year 1349. This mistake must be rectified. In other words, the suit of the plaintiffs will be decreed for the year 1347, 1348 and for 12 annas kist of 1349. The rate of cess allowed by the learned first appellate

Court is also wrong. The rate allowed is Rupees 7 odd, whereas the correct rate is Rs. 3-12-0. The plaintiffs-appellants will get cess at the correct rate. Thus, while the appeal of the plaintiffs-appellants is allowed, the cross-objection is also allowed. In the circumstances of the case the parties will bear their costs throughout.

Sinha, J.

12. I agree that the appeal should be allowed on the ground that the rent reduction proceedings were vitiated on account of the fact that all the co-sharer proprietors had not been impleaded in the proceedings taken by the tenants to get their rent reduced. It is a little surprising that the Courts below should have applied the rule of holding out by all the joint landlords of a particular landlord as their representative in their dealings with the tenants. A number of co-sharer proprietors may allow their joint property to be managed by one of them, and in that capacity that particular proprietor may be managing the zamindari and granting rent receipts on behalf of all of the co-sharers. But that arrangement will not render the de facto manager the representative of the entire body of co-sharer proprietors in litigations relating to the estate. In a litigation relating to the joint estate, all the joint proprietors must sue, or be sued, or one of the joint proprietors may sue on his own behalf as also on behalf of the entire estate but the co-sharers, who have not joined as co-plaintiffs, must be impleaded as defendants, popularly known as pro forma defendants, that is to say, they must be on the record of the proceedings either as plaintiffs or as defendants. I have not come across a single-case, except the present, where it has been successfully contended that, out of a large number of co-sharer proprietors, one of them may sue, or be sued, in his own name for a certain relief in respect of the joint estate in a representative capacity so as to render the judgment given is that suit binding on all the co-sharers, some of whom may not even have been impleaded at all. The tenancy law, for example, Section 188, Bihar Tenancy Act, contemplates that, where there are; a number of joint landlords interested in an estate, if they sue under the provisions of the Act, they must act together or, in certain proceedings, one or more such co-sharers may move the Court making all the remaining co-sharer landlords party defendants to the proceeding. In the present case, only two, out of a large body of co-sharer proprietors, were impleaded in the rent reduction proceedings. The Courts below seem to have taken the view that they were sued in a representative capacity. I fail to see how that position can be taken. It is open to the co-sharers to execute a power of attorney, special or general, in favour of one, or some of them, to act on behalf of all of them. But even then it is necessary in law, in order to bind all of them, to name all of them as parties to the proceedings, even though only the one, who holds the power of attorney, may prosecute or defend the suit, as the case may be, in the name, and on behalf, of all of them by virtue of the power of attorney.

13. In the present case, it has not even been claimed that all the joint-landlords

had executed such a general power of attorney in favour of those two who had been specifically named as opposite party in the rent reduction proceedings. In my opinion, even if they had executed such a power of attorney, that would have availed only to this extent that they could have represented all the landlords in the proceedings, and taken steps to prosecute their defence only if all of them had been named as parties to the proceedings. It is not a case like that of the karta of a joint Hindu mitakshara family, who represents the entire family, and can sue, or be sued, in his name alone so as to bind the entire coparcenary. Hence, in my opinion, the Courts below have completely misdirected themselves in applying the rule of representation to the present case.

14. On the question of whether one of a large number of tenants, who have all been recorded in the finally published record-of-rights as jointly) interested in the holding, could have acted in a representative capacity, I reserve my opinion, as the question need not be decided in this case. It is enough to base the judgment in the present case on the simple fact that all the co-sharer proprietors were not impleaded in the rent reduction proceedings. It may be that, in the case of a joint Hindu Mitakshara family, the karta of the family, which is the owner of the holding, may represent the entire family in relation to the landlords. But where the body of joint tenants is not a joint Hindu family, and if all of them are shown in the finally published record of rights as joint tenants of the holding, it becomes a moot question whether or not the record-of-rights supersedes the landlords' private papers. I need not pursue this matter any further in view of the consideration that the question need not be decided in the present case.

15. The matters raised in the cross-objection were practically conceded by the learned advocate for the appellants, who rightly pointed out that the mistake as regards the rent for the kist of 1349 Fasli was a clerical one. As regards the rate of cesses for the purposes of the Cess Act the holding has been) treated as a tenure as understood in that Act, and, hence, the learned Subordinate Judge was mistaken in allowing messes at one anna per rupee.