

(1921) 07 PAT CK 0002
In the Patna High Court

Batahu Jha

APPELLANT

Vs

Parmeshwar Rai and Others

RESPONDENT

Date of Decision : 23-07-1921

Acts Referred:

Citation : 64 Ind. Cas. 234

Hon'ble Judges : Bucknill, J

Bench : Single Bench

Judgement

Bucknill, J.—This is an application in civil revision in connection with an order which was passed by the Munsif of the Second Court of Muzafferpur dated the 18th December 1920. It concerned the refusal by the Munsif of an application made by an auction-purchaser at a rent decree to set aside a previous order which had been made by the Munsif, under which he had allowed the sale of a holding (which had been ordered under a rent decree) to be set aside on payment into Court of the decretal amount due. The circumstances under which this application has arisen are certainly somewhat peculiar. The landlord of the land in question was the Darbhanga Raj, which instituted a rent suit in the Court of the Munsif at Muzafferpur against two tenants, who may here be called the judgment-debtors. This rent suit appears to have been decreed in favour of the landlord, who executed under it by selling the holding in respect of which the rent was due. It is said that the rent decree was obtained ex parte, but this is not here very material. After the sale had taken place, and it must be mentioned that at the sale the present applicant was the purchaser, certain other persons, who may be called the 3rd parties, applied to the Munsif praying that they might be permitted to pay into Court the decretal amount of the order under the rent suit, on the ground that they had purchased the property at an auction money sale, which had been, so they said, held a long time prior to the rent suit. The Munsif, however, refused this application, holding that the judgment-debtors alone were under the Bengal Tenancy Act capable of taking up the position of being able to have the sale set aside by a deposit of the amount due under a rent decree. All this, I should remark, took place without the knowledge or

citation of the present applicant, the auction-purchaser at the rent-decree sale.

2. The next step seems to have been that these 3rd parties appeared before the Munsif with an application, purporting to be signed by one or both of the judgment-debtors praying that they might be allowed to pay in the decretal amount, and it is also said with a vakalatnama authorising a particular legal practitioner to represent them in this behalf. When these papers were placed before the Munsif, he thereupon, without any suspicion, granted the permission asked. Apparently the application was made on the 11th September 1920 and the order authorizing the payment and declaring that the sale would be set aside and the matter dismissed as the claim would be fully satisfied on the deposit of the decretal amount, was dated the 28th September of last year.

3. It is difficult under the circumstances to see what other course the Munsif could well, then, have adopted, although it might be that it would have been more regular had the applicants given notice or had the Munsif given notice or ordered notice to be given to the auction-purchaser at the rent-decree sale. Presently and not long after this proceeding had taken place, the auction-purchaser came to the Court in order to obtain a copy of his sale certificate, and presumably, with the intention of obtaining in the ordinary course possession of the holding which he had purchased. However, to his surprise he found when he arrived at the office of the Court that the sale, under which he imagined he had purchased the tenure, had been set aside. As he was clearly under the impression that no such thought as payment of the money decree had seriously entered the judgment-debtors' minds, he saw them and subsequently made an application before the Munsif that his order authorising the payment into Court of the decretal amount should be set aside. The application came before the Court on the 18th December 1920, and the attitude which was adopted by the Munsif seems to my mind to have been somewhat obscure. The two judgment-debtors, whose names were Parmeshwar Rai and Mahadeo Rai, both went into the witness-box and swore that they had never made any application to deposit the money, that the signature or signatures which purported to be on the petition to be allowed to pay into Court the decretal amount was or were not their signature or signatures, and (although this does not appear in the order passed by the Munsif) it is stated at the Bar to me that they also said that they had not in fact authorized any Vakil to represent them on any such sort of application.

4. Now it does seem to me that when the two judgment-debtors deliberately on oath gave evidence to the effect that a document or documents upon which the Munsif had previously acted and which purported to be signed by them were not in fact signed by them or one of them, but were forgeries, it was incumbent upon the Munsif to consider very carefully whether he should not have taken evidence from the other side. I think that, under such conditions, the applicant here, who was the petitioner before the Munsif, had discharged the onus which lay upon him by proving prima facie that the documents which had been acted upon by the Munsif were not authentic. Now it may be said that the only party cited by

the applicant in the proceedings before the Munsif was the landlord (the Darbhanga Raj), and it has been quite rightly pointed out by the learned Vakil for the respondent here, that is, for the Darbhanga Raj, that there was no direct allegation of fraud against the Raj as such. It is difficult to say from anything which appears in the order made, by the Munsif what, if any, were the allegations of fraud which had been made, but in the petition which is now before me it is suggested that some of the agents of the Raj had, in collusion with the so-called third parties (that is to say, those persons who alleged that they had purchased the property prior to the rent decree as a result of an auction money sale), manipulated for their own purposes and prepared the false documents which constituted the evidence upon which the Munsif acted in setting aside the auction-rent decree sale.

5. It is also pointed out by the learned Vakil for the applicant here that it would seem that the Pleader who appeared as representing the judgment-debtors in this alleged fraudulent application, purporting to have been made by the judgment-debtors for setting aside the sale under the rent decree was, in fact, one of the Pleaders OR the Pleader who often appears in that locality for the Raj itself. It may have been extremely difficult and perhaps impossible for the applicant here to have proved conclusively any fraud or collusion on behalf of the servants of the Raj with the 3rd parties, who stated that they had purchased at the money auction decree sale. It may be too that if it had been the case that some of the agents of the Raj had acted improperly in collusion with these alleged purchasers in connection with attempting to get the rent decree sale set aside, that the Raj should primarily have rightly been cited to appear as respondents to the application which was being made by the auction purchaser at the rent-decree sale. But the only persons who were ostensibly before the Munsif and whom he knew as legal persons before him in connection with the application to set aside the sale, which had taken place under the rent, decree, were the two judgment debtors, and, as they appeared themselves before him on the 18th December 1920 and repudiated entirely and designated as forgeries the documents upon which he purported to act before, he should, I think, have taken more definite notice of what they stated and should, if he had been able so to do, have cited those or issued notice on those against whom the allegations of fraud were made if they were known, and at any rate, if they were not known and citation was, therefore, impossible, to call upon the Raj to show any reason why the order which he had previously made on the 28th September 1920 should not be rescinded. I confess it is perhaps a little difficult to understand exactly the position which was taken up by the Raj before the Munsif. It is said that the Raj really adopted an indifferent attitude and certainly now to-day before me the learned Vakil for the Raj has taken up what I considered to be fit very proper position. It is said that the applicant may not be a very desirable tenant, but that, after all, has little to do with the present question before me. What the Munsif actually did and where I think that he has made an error, is that without hearing or investigating the matter any further, he says that it would

appear that the judgment-debtors in collusion with the auction-purchaser are now denying that they had deposited on their own behalf the money in question. He does not, however, say why he comes to this conclusion, nor apparently does he base it upon any evidence which he had received, for, as a matter of fact, we know that he had received none to that effect. The only ground upon which I can see his conclusion was based was that he thought that the signature of Parmeshwar Rai (one of the judgment-debtors), which was on his deposition, bore a resemblance to the signature which appeared on the petition dated the 11th September 1920, in which it was asked that the decretal amount might be paid into Court for the purpose of setting aside the sale under the rent decree.

6. I should like in connection with this to make two observations. The first is that although it is true that under the Evidence Act comparison of handwriting is a legitimate enough method of supporting evidence and the view of persons competent to express opinions may be in many cases of considerable value, the opinions of those who have not carefully studied the art of caligraphy is not as a rule of very great utility. Indeed so uncertain and inexact is the science of the study of caligraphy that it has been for some years past the tendency to regard evidence even of experts as of somewhat inconclusive character. Secondly it is obvious that if persons were going to take the trouble to place a signature on a petition such as the one under consideration or upon a vakalatnama authorizing a legal practitioner to appear on someone's behalf, the least which one would expect, and it is what one might expect with practical certainty, would be that they would make some effort that the signature which they did place or caused to be placed on such documents would bear some resemblance to the genuine signature of the person whose signature they desired it to be mistaken for. Consequently the mere fact that there was a resemblance between the signature alleged to be false and a signature admitted to be genuine does not carry any very great weight. For these reasons, therefore, I am quite satisfied that this matter should be referred back to the Munsif. He must take it that, when the two judgment debtors have definitely sworn that they did not make this application, that they did not give this vakalatnama and that the signature or signatures which appeared on those documents are not in fact their own, that constitutes a prima facie case which throws upon the other side, if there is any other side, the onus of rebutting it. That, I feel sure, is a correct exposition with regard to the burden of proof, which is very concisely but well pointed out in the case of *Mohima Chunder Dhur v. Jugul Kishore Bhattachatji* 7 C. 736 : 9 C.L.R. 471 : 3 Ind. Dec. 1022, where a Bench of the Calcutta High Court points out that where a plaintiff himself came forward and denied the execution of a document, this was sufficient to cast upon the defendant the burden of proving its genuineness. Now it is true that there is no defendant here in one sense, and it may be that it will not be possible for the applicant to cite those persons whom he alleges to have been guilty of falsifying these documents. It may very well be further that, should he be so advised, it may be that the proper place where such serious allegations should be investigated should be a Criminal and not a Civil Court. At

any rate the matter must go back and the Munsif must deal with the application upon the lines which I have given.

7. The same judgment will govern Civil Revision No. 22 of 1921.