

(1928) 11 PAT CK 0016
In the Patna High Court

Bhubaneshwari Kuer

APPELLANT

Vs

Gopal Saran Narayan Singh

RESPONDENT

Date of Decision : 05-11-1928

Acts Referred:

Citation : AIR 1929 Patna 331

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Ross, J.—This is an appeal by the defendant in a suit for cess from 1921 to 1924. The defendant is the owner of the 7 annas Tikari Raand the plaintiff is the owner of the 9 annas Tikari Raj. It appears that when the Rawas partitioned in 1840 by complete mahals, certain lands in mahals allotted to one of the proprietors were given to the other proprietor, in different estates, for the purposes of equality, and it is in respect of such lands that this suit has: been brought.

2. The first contention was that as it was expressly stipulated in the partition deed that "malguzari" was to be paid by the person to whom the estate was allotted, the intention was to give these separate lands free of all liabilities. But case is a liability which was imposed by a subsequent statute which could not have been in contemplation of the parties at the time of the partition; and there is nothing in the partition deed which can relieve the defendant of the statutory liability.

3. It was then contended that the defendant in not a rent free tenure-holder. It was admitted that she is a tenure-holder under the definition in the Act.

4. It was further conceded that no rent was payable and it seems to follow consequently that she is a rent free tenure-holder. It was argued, however, that he true position is not that she is not paying rent but that she is, in effect, by reason of this mutual arrangement, paying revenue through the plaintiff. This suggestion finds no support in the stipulation in the deed.

5. The substantial question in the appeal is the question of limitation. It is

contended that this is a suit for money and only the arrears of three years and not arrears of four years are recoverable. Now Section 47, Case Act, provides that every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest as if the same were an arrear of rent; and Section 41 states what sums are payable under the Act. The present suit has been brought under the provisions of Section 58 which does not deal with the sums payable under the Act, but with a penal sum which is recoverable in default of payment of the instalment payable under the Act. It cannot be said that this penalty is payable. The penalty is only recoverable; and, in my opinion, the plaintiff had the choice to bring a suit either for four years' arrears of case with interest, claimed as if it was an arrear of rent, or for the penal amount provided by Section 58, as an ordinary money claim. I hold therefore that the claim for 1921 is barred and to this extent the appeal must be decreed and the decree of the Court below modified. The plaintiff is entitled to costs on the sum decreed in this favour throughout.

Das, J.

I agree.