

(1925) 07 PAT CK 0024
In the Patna High Court

Bhupal Missir and Others

APPELLANT

Vs

Sarban Lal

RESPONDENT

Date of Decision : 15-07-1925

Acts Referred:

Citation : 91 Ind. Cas. 735

Hon'ble Judges : B.K. Mullick, Acting C.J.;Kulwant Sahay, J

Bench : Division Bench

Judgement

B.K. Mullick, Acting C.J.

1. This is an appeal against a judgment of a learned Judge of this Court setting aside a decree made by the District Judge of Bhagalpur.

2. The suit out of which the appeal arises was one for the rent of the fruit of certain trees in a holding belonging to the defendant which had been held rent-free for a considerable time.

3. The Munsif found that the land was not assessable with rent but that, the tenant was liable to pay half the share of the produce of 3 mango trees, one bael, 10 palm, 1 mulberry, 1 guava, 1 plum and 1 lemon tree. He assessed the value of the fruit for the years 1324 to 1327 Fasli and gave the plaintiffs a decree.

4. In appeal the District Judge has come to the same conclusion.

5. IN second appeal Mr. Justice Das found that there was no liability to pay, the value, of a half-share in the fruit and he dismissed the suit altogether.

6. In the present appeal under the Letters Patent, it is contended that the learned District, Judge's judgment is conclusive, because it is based on a finding of fact.

7. It is admitted that the land contains the, homestead of the defendant and, that he, has been in occupation for many years. In his written statement the, defendant pleaded, that he had never, paid rent. There is no clear finding, upon,

this point in any of the Courts below but the learned Munsif meets the allegation by saying, that even, if rent has not been paid the defendant is not free from the liability to pay the rent claimed in the present suit.

8. The, learned Munsif finds that as the defendant holds the land under the plaintiffs, the relationship of landlord and tenant arises and except for the special contract to, the contrary, rent would be payable for, the land. But as, the special contract does, not cover the trees, he holds that the defendant is liable for the produce of the, trees He further finds that the Record of Rights records the liability of the defendant to pay half the price of the fruit.

9. The District Judge does not set out his reasons in detail for agreeing with the Munsif as to the relationship of landlord and tenant, but it would, appear that he agrees with the Munsifs construction of the Record of Rights and that his decree is principally based upon this finding.

10. If the Record of Rights is a document of title obviously it was open to Mr. Justice Das in appeal to construe, that document and I cannot say that his construction is wrong. It is to be noticed, that in regard to the mango, beal and palm trees it is stated that the raiyat and the malik have a half share each. Then comes the entry that there is one mulberry, one guava, one palm, and one lemon tree on the land. Against these trees there is no entry that the landlord has any title. I think it is a reasonable construction that the entry regarding title relates only to the timber and not to the produce of the trees. Moreover, the entry must be read with due, regard to the existing law. The tenant has the right to cut, but the landlord, has the right to appropriate the timber. By the Common Law the landlord has no right at all in the fruit unless it can be, held that the object of the entry was clearly to record a special contract cutting down the landlord's rights in the timber. If it had intended to cut down the rayiat's rights in the fruit the entry would have said so.

11. If, however, it beheld that the Record of Rights is not a document of title but merely a document of evidence, even then it was open to the learned Judge in second appeal to interfere with, a decision based upon the Record of Rights, if the decision was founded on something which the Record of Rights, did not contain. Now, the Munsif with whom the learned District Judge agrees states that the Record of Rights declares that the plaintiffs are entitled to the fruit. There is no such declaration and, therefore, the learned District Judge's finding is based upon no evidence and is liable to be challenged, iii second appeal.

12. In either view of the case the Record of Rights cannot be. called in aid by the plaintiffs to support their claim.

13. The Munsif rightly threw the onus upon the defendant to show that rent was not payable for the land. When the defendant proved that the holding was rent-free the onus was shifted upon the plaintiffs to show that there was a special contract by which the rent became payable for the fruit. The Record of Rights does not help them to discharge that onus.

14. There remains to be considered a reference in the learned District Judge's judgment to a document marked, as Ex. 5, This was a judgment apparently not inter partes regarding another holding and it recites that rent was payable for the trees upon homestead lands held by the tenant in that suit. Whether that, homestead land was rent-free is not clear, and there is also nothing in the learned Judge's judgment which shows that this document was admissible in evidence in the present trial. The learned Judge's finding is that rent has been realised from the tenants of the village in respect of fruit from, trees standing on homestead land. That finding is of course conclusive, in second appeal but the finding does not go far enough and show that any inference can be drawn from it in favour of the plaintiffs for the purposes of the present suit.

15. The result, therefore, is that there were no materials before the District Judge upon which he could come to a decision in the plaintiff's favour, and the learned Judge of this Court was right in holding that the decree was wrong and that the suit should be dismissed.

16. We are asked to direct a remand if we find that the evidence is not sufficient to support the decree of the District Judge. But having regard to the fact that this case has reached the stage of a Letters Patent Appeal we do not think that we should give the plaintiffs another opportunity of adducing evidence which they ought to have adduced in the Trial Court.

17. The result, therefore, is that this appeal will be dismissed with costs throughout.

Kulwant Sahay, J.

18. I agree.