

(1916) 06 PAT CK 0002

In the Patna High Court

Bishen Narain Das Poddar and Others

APPELLANT

Vs

Chandra Kanta Naik and Another

RESPONDENT

Date of Decision : 14-06-1916

Acts Referred:

Bengal Rent Act, 1859 — Section 82

Citation : AIR 1916 Patna 110 : 37 Ind. Cas. 658

Hon'ble Judges : Sharfuddin, J;Roe, J

Bench : Division Bench

Judgement

Roe, J.—In this case the appellant is a cultivator of the District of Manbhum, who, prior to the passing of the Chota Nagpur Tenancy Act, was an under-raiyat in an occupancy holding from which the occupancy raiyat had been evicted for failure to pay rent. He retained possession after the decree against the occupancy raiyat and also after the execution of that decree by delivery of possession to the decree-holder. That decree was obtained on the 6th April 1908, and possession was delivered on the 8th June 1908 and the present suit instituted on the 3rd July 1911. The Chota Nagpur Tenancy Act was extended to the locality in which this holding is situate in the year 1909. The proceedings before us, therefore, prior to the present suit, were under the Rent Act X of 1859, and the present suit itself is to be considered in the light of the Chota Nagpur Tenancy Act.

2. The plaintiff claims to evict the defendant as a trespasser. To be on the safe side he also issued a notice upon him to quit, but as he states in his plaint he is confident that any such notice was unnecessary. The defendant puts up three defences.

3. First, that he is a tenant and that, therefore, under the Chota Nagpur Tenancy Act he is not liable to eviction by any Civil Court save that of the Deputy Commissioner of Manbhum. Secondly, that he is an under-raiyat and that the interest of an under-raiyat is an incumbrance upon the holding not void but only voidable and that his under-tenancy has never been avoided in the manner

contemplated by the Rent Act; and thirdly, if he is to be regarded as a trespasser he has a right to enter into a contest upon the validity of the decree made against the occupancy raiyat for ejectment for failure to pay rent. Practically, therefore, we have to consider, only one question in this case and that is whether the defendant was a trespasser or a tenant. If his interest was an incumbrance obviously he was a tenant; if he was a tenant no suit against him would lie; if he is a trespasser action may be taken against him in the ordinary Civil Court.

4. The lower Courts have concurred in finding that he is a trespasser. After full consideration of this question we feel that we must agree with the conclusions arrived at by the lower Courts. We have searched the Weekly Reporter for any expression of opinion in respect to the status of an under-raiyat in the case of an occupancy holding from which a raiyat has been evicted for non-payment of rent. There is ample justification for the proposition that where a holding of an occupancy raiyat is sold, the interest of an under-raiyat is not void but voidable. But there is no case of an under-raiyat's status being recognised in a case in which the occupancy holding is entirely destroyed under the old Rent Law. Section 82 seems to us to completely decide the question by its direction that; when a decree is for eviction, the decree-holder shall be put in actual physical possession of the land. There is a clear distinction between proceedings in regard to a tenure-holder and proceedings in regard to a raiyat. Where the proceeding has been with regard to a tenure-holder "or-under-tenant the decree is to take the form of an order to all raiyats to pay rent to the decree-holder, and it seems to us that it is impossible to say that the decree-holder can be put into actual physical possession of the land, unless indeed it be conceded that the under-raiyat is completely ignored and treated as having no locus standi.

5. The remaining point for decision is whether the under-raiyat can, in the proceedings now before us, contest the validity of the decree against his lessor. His lessor was Rajendra Chowdhury and he obtained the holding by a sale for arrears of rent. It is clearly set out in Act X of 1859 that a sale for arrears of rent can only take place in the case of an interest which transferable. It is clearly laid down that a decree for ejectment can only be made in a case in which the holding is not transferable.

6. Therefore, Mr. Naresh Chandra Sinha argues that the two decrees are contradictory in terms; one or other of them must be wrong, and he contends that it was open to his client to come forward and contest the second decree. Here again it is clear that the under-raiyat could not contest the validity of that decree in this suit as defendant, unless he had a locus standi to contest the validity thereof in a separate suit in which he would have been the plaintiff. We can find nothing whatever in any part of Act X of 1859 which could give an under-raiyat a locus standi to institute such a suit or proceeding as plaintiff. He might perhaps have maintained a suit for a declaration that the decree was fraudulently obtained and, therefore, a nullity. But he had no locus standi to have it declared that it was contrary to law. Therefore, he cannot put forward the illegality of that

decree as a defence to a suit in which it is sought to declare him a trespasser.

7. In these circumstances we feel the decision of the lower Court is correct and that the appeal must be dismissed with costs.