
(1933) 02 PAT CK 0007

In the Patna High Court

Chandra Nath Sahai and Others

APPELLANT

Vs

Janki Prosad Sahu and Others

RESPONDENT

Date of Decision : 21-02-1933

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1933 Patna 270

Hon'ble Judges : Scroope, J

Bench : Division Bench

Judgement

Scroope, J.—The plaintiffs sued for declaration of their jagirdari right in the plot of land 882 in village Bargaon which they allege they settled with plaintiffs 4 to 9 in raiyati right.

2. Their case is that the village is their jagir property and that the disputed land was the bakasht till it was settled in raiyati with plaintiffs 4 to 9 but that they have been dispossessed by the defendants as a result of proceedings u/s 145, Criminal P.C., in 1926. The defence was that the land was not the jagir of the plaintiffs, they had never been in possession and that their suit is barred by limitation. The Munsif of Ranchi decreed the suit finding title with the plaintiffs and they had been in possession within 12 years of the suit and his decision was affirmed on appeal by the Subordinate Judge of Ranchi. In second appeal the learned advocate Mr. B.N. Mitter for the appellants tried to challenge the finding of both the Courts as to title and possession but the findings are the result of a careful consideration of the case of both sides and cannot be challenged in second appeal. They are to my mind clearly correct and no point of law arises.

3. The second point pressed by Mr. Mitter was this: the suit was brought by three plaintiffs originally who were brothers, they having been recorded in the proprietary khewat of the village; during the pendency of the suit before the Munsif, plaintiff 1, Kishun Narayan Sahu, died and the remaining plaintiffs 2 and 3 brought the fact to the notice of the Court on 24th September 1927 by a petition and the petition was to the effect that the name of plaintiff 1 should be

struck out from the category of the plaintiffs. The petition was an unverified one and had to be returned for verification; this was done and the plaint was amended as prayed for. It is contended now in second appeal that the plaintiff 1 having died during the pendency of the suit it abated entirely inasmuch as all the heirs and legal representatives of the deceased plaintiff were not brought on the record. Now this point was not taken before the Munsif, nor was it taken in the grounds of appeal before the Subordinate Judge, so we do not know the facts. According to what Mr. Mitter says Kishun Narayan Sahu left no sons; he states that the heirs are the sons of plaintiff 2, Janki Prosad Sahu and plaintiff 3, Haricharan Sahu, and that they should be on the record. It is not enough, he contends, to have Janki Prosad Sahu and Haricharan Sahu on the record as plaintiffs.

4. Now in the first place, as I say, we do not know the facts; in the second place if plaintiffs 2 and 3 cannot adequately represent their own sons in so far as they have succeeded to the property of Kishun Narayan Sahu they could not represent their sons in the original case at all and if Mr. Mitter's contention is correct those sons ought to have been on the record from the very start.

5. No objection was taken in the written statement that the suit was bad for defect of parties and this answers Mr. Mitter's objection when he points out that the application to delete the name of Kishun Narayan Sahu had been filed after he filed his written statement; besides there was nothing to prevent defendants from filing a subsequent written statement. Any how it is pure skirmishing in the air to discuss the matter any further as we do not know the facts and it is the defendants' fault that we do not know them and the plaintiffs' suit cannot be defeated on this highly technical point; besides I see no reason not to hold as the learned Subordinate Judge has done, assuming Mr. Mitter's contention that the facts are right, that the interests of the sons plaintiffs 2 and 3 are fully represented by their father and the surviving brothers were competent to continue the suit without effecting substitution.

6. The rulings relied on by the learned advocate for the appellants, namely, Lilo Sonar Vs. Jhagru Sahu, and Basist Narayan Singh and Others Vs. Modnath Das and Others, , are different cases; those were cases where difficulty arose because one of the respondents who had a decree in his favour had died and his heirs had not been substituted, and the present case, to my mind, is easily distinguishable on the facts as alleged; but as I say we do not know the facts.

7. In my opinion therefore this appeal must be dismissed and the decisions of the two Courts below must stand. The plaintiffs are entitled to costs.