
(1930) 04 PAT CK 0005
In the Patna High Court

Charku Mahata and Others

APPELLANT

Vs

Mahendra Nath Rai and Others

RESPONDENT

Date of Decision : 11-04-1930

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 258, 58, 85

Citation : AIR 1931 Patna 31

Hon'ble Judges : Macpherson, J; Fazl Ali, J

Bench : Full Bench

Judgement

Macpherson, J.—The appellants brought two suits in the Court of the Munsif of Dhanbad for declaration of their title and confirmation of their possession in respect of plot 308 and plot 308/5144 (Suit No. 54 of 1926) and plot 360 (Suit No. 55) of Parasbania. Plot 308 had been recorded in the recent Record-of-Rights as ghairabadi malik. It is to be distinguished from the five sub-numbers covering different land of which four plots, 308/5141, 308/5142, 308/5143 and 308/5145, have been recorded in the name of plaintiffs in khata 44 as raiyati, while plot 308/5144 is entered as raiyati of defendant 8. Plot 360 stands recorded as ghairabadi malik but with the paras trees standing thereon as belonging to the plaintiffs. The plaintiffs alleged that plots 308 and 308/5144 appertained to their chak which they had taken from the predecessors of the landlord defendants 1 to 7 in 1268 B.S. at a rental of Re. 1-8-0 and that plot 360 belonged to another chak which they had taken in 1269 B.S. from the same persons at a rental of Rs. 3, these rents eventually coming to be paid in a single sum. The landlords urged that the sanads of the plaintiffs were forged, and that in any case the land was not within the ambit of those chaks and plaintiffs had no possession. Defendant 8 in Suit No. 54 stated that he took settlement in January 1923 from defendant to 7 of the piece of land recorded (sic) is name, part of which he had since (sic) from jungle.

2. The learned Munsif, in an elaborate judgment, held that the sanads were genuine instruments, that the disputed plots were covered by them respectively,

that portions of these plots were cultivated from time to time and generally that the plaintiffs had satisfactorily established their title to them and continuous possession, the defendants never having exercised acts of possession except defendant 8 in Suit No. 54 who, at the date of the intermediate stage of attestation of the Record-of-Rights, was found cultivating the plot recorded in his name. He next considered an objection not taken in the written statement but raised at the trial on the issue:

Is the suit maintainable in its present form that Section 258, Chota Nagpur Tenancy Act, 1908, as amended, was a bar to the plaintiff's suit inasmuch as the effect of the decree which was asked to pass, would be to vary the order of the officer who u/s 85 of the Act settled fair rent for the land recorded in khata 43 in the name of plaintiffs at a rent of Rs. 4-8-0 and negatived the objection.

3. He accordingly decreed the suits. It is important to observe that the plaintiffs strictly confined their claim to possession of the land and in particular did not claim that they are entitled to hold the plots in suit under the rental fixed u/s 85 for khata 43.

4. On appeal the only point urged on behalf of the defendants-appellants was that Section 258 was a bar to the suits. The learned Subordinate Judge upheld that contention and dismissed the suits. In these appeals the only point which arises is whether Section 258 precludes the Court from entertaining the suits. In my judgment the point could not in fairness to the plaintiffs be taken at the stage of argument and on the issue mentioned. But, assuming that it could, I am of opinion that even on the record as it stands it should not have prevailed.

5. During the preparation of the Record-of-Rights the lands which the plaintiffs-appellants claimed to hold under their sanads were recorded: (1) in their khata 43 at a rent of Rs. 4-8-0 including cess of Rs. 0-2-3(2), in their khata 34 shown as belagan kabil-lagan and (3) in the three plots now in controversy. The landlord applied u/s 58, Chota Nagpur Tenancy Act, for the settlement of fair rent (sic) respect of khata 43 only. The appeal (sic) objected that the lands of the tv(sic) atas recorded in their name were held under the jama recorded against khata 43 only and that the jama was mukarrari. This objection should of course have been decided u/s 85, but for some reason a proceeding, which is designated a suit, was started purporting to be u/s 86. There it was held

that the plaintiffs had failed to establish either their claim to mukarrari or that the lands of their khata 44 are really part and parcel of their holding in khata 43

so as to be covered by the rent of Rs. 4-8-0 recorded against khata 43. A rent of Rs. 6-9-0 was then settled for khata 43. In those proceedings no point regarding the lands now in dispute was either raised or decided. The contention which has found favour with the lower appellate Court is that the Courts are expressly barred u/s 258 from entertaining the suits of the appellants as having been brought to vary either directly or indirectly the order of the revenue officer under Sections 85 and 86 of the Act which order has the force and effect of a decree of

a civil Court in a suit between the parties. The view of the learned Subordinate Judge is that in a proceeding under those sections the question of the area of the land held by the tenant is a matter directly involved and he relies upon the decisions in *Keshav Prasad Singh v. Bhagwat Saran Pande* AIR 1924 Pat. 511 and *Sajjad Ahamad Choudhuri and Another Vs. Trailakya Nath Choudhuri and Others*, . It will be observed that the decisions relied upon relate to Sections 105 and 105-A, Ben. Ten. Act. Now though Section 86, Chota Nagpur Tenancy Act, is the same as Section 105-A, Ben. Ten. Act, Section 85 of the former is by no means the same as Section 105 of the latter. Section 105 enjoins the revenue officer, on application either by the landlord or the tenant, to settle a fair and equitable rent in respect of the land held by the tenant. Section 85 on the other hand enacts that "the revenue officer may settle fair rent in respect of any land held by a tenant." An examination of the scheme of the Act shows that the alteration was advisedly made.

6. In Chota Nagpur, settlement of rent is restricted to the revenue officer except in certain specified instances. u/s 31 an increase of rent in respect of excess area held by an occupancy raiyat is prohibited except by order of a revenue officer passed under Ch. 12 (which includes Section 85) or by an order of the Deputy Commissioner on an application by the landlord. It is clear that provision had to be made in Section 85 for the case referred to in Section 31. There were also difficulties to be met in connexion with increased rent for new conversions from upland into rokar. It was important therefore to proceed on lines different from Section 105, Ben. Ten. Act, which provides that the fair and equitable rent to be fixed shall be in respect of the land held by the tenant that is the land of the particular tenancy. The expression "any land held by a tenant" shows that in Chota Nagpur the settlement of fair rent is not necessarily made in respect of the whole tenancy. In point of fact what the landlord asked in his application u/s 85 was a settlement of fair rent on the land included in khata 43. The objection of the raiyat was that the rent recorded in respect of the land of that khata (on the basis of which fair rent is usually settled) was not correct inasmuch as it covered other land also to wit, khata 44. For our present purpose what was decided u/s 86, so far as it is relevant to the present purpose, was no more than this, that the rent recorded in khata 43 was in fact the rent for the land included therein and for no other land in particular, was not also for the land included in khata 44 recorded as kabil lagan, and that accordingly that rent was a proper basis for a settlement of fair rent in respect of khata 43. Indeed, on a perusal of Section 86, it is difficult to see how the question whether plaintiffs are entitled to recover possession of certain land not mentioned in the proceeding under 85 or any issue u/s 86 (nor claimed to be covered by the rent settled under that provision for khata 43), could at all arise under the terms of Section 86. Section 86 enjoins that when certain specified issues arise incidentally in the proceeding u/s 85 they are to be tried and decided by the revenue officer settling fair rent. The issues specified admittedly would not include one as to whether the raiyat of khata 43 held any land, or in particular the plots in suit, otherwise than within the jama of

Rs. 4-8-0.

7. It is then suggested by Mr. S.M. Mullick that Section 86 is not exhaustive. I am unable to agree. It sets out every issue which is to be decided when it arises in a proceeding for settlement of fair rent u/s 85. The only question which arose was as already indicated, whether the rent of Rs. 4-8-0 recorded against the land of khata 43 covered the land of khata 44 as well. If it did not as was decided it is obvious that the decision could not imply that the raiyat had not the right in the land of khata 44 which he is recorded as actually possessing. Still less could it imply that he had no right at all in other lands which he did not then and does not now seek to bring under the jama of khata 43. Manifestly therefore the present suit for confirmation of possession of such other lands do not seek to vary, modify or set aside directly or indirectly the order u/s 85 read with Section 86, nor if decreed could they have that effect. It might indeed be so if the claim had been that the fair rent of Rs. 6-9-0 settled for khata 43 covers the plots in suit also. What Section 258 prohibits in respect of rent settled u/s 85 is any claim in a suit that it is not the fair rent for the land in respect of which it has been settled. There is no constructive res judicata u/s 258 that any land which in the rent settlement proceeding the plaintiffs either unsuccessfully claimed or did not claim though they might have claimed to be covered by the rent entered in that particular khata of the Record-of-Rights, does not belong to them at all. Apart from the fact that the decision in Kesheo Prasad Singh Vs. Bhagwat Saran Pande, is under the Bengal Tenancy Act which, as already indicated, is in terms different from the Chota Nagpur Tenancy Act, the position in that case was that fair and equitable rent u/s 105 was settled in respect of a holding of some two bighas and the raiyat afterwards instituted a civil suit for abatement of that rent on the ground that the holding for which he paid his rent was actually some three bighas of which part had been lost. What was really decided is that as it had not been shown that there was any diminution in the area whereon fair rent was settled u/s 105, Section 109 applied and the civil Court could not entertain a suit for alteration of the rent so settled on the ground of diminution of area prior to the order u/s 105. Incidentally it appears to have been held (what is clearly contrary to wide experience of settlement of fair rent u/s 105) that it was impossible for the revenue officer to settle fair rent on respect of the land held by the tenant without ascertaining the quantity, but the true basis for the decision was as just stated.

8. In Sajjad Ahamad Choudhuri and Another Vs. Trailakya Nath Choudhuri and Others, also, where the landlord sued for recovery of arrears of rent at the amount settled u/s 105, and the defendants pleaded that they were possessed of an area less than was recorded in the Record-of-Rights, what was substantially decided was that the order u/s 105 was conclusive as to the rent payable for the defendants holding at the time of assessment irrespective of its area.

9. As the present suits do not in any way challenge or seek to vary, modify or set aside either directly or indirectly the orders passed under Sections 85 and 86

they are accordingly not barred u/s 258. The decision under Sections 85 and 86 in no way decides that the plots in suit do not belong to the plaintiffs-appellants. But while implying nothing as to the ownership of those plots it does determine that they are not covered by the rent settled for khata 43 u/s 85. The question whether any or what rent is payable does not arise in the present litigation though possibly the lands may like khata 44 be taken to be belagan kabil-lagan. The appeals are accordingly allowed and the order of the first Court is restored with costs in this Court and the Court below.

Fazl Ali, J

10. I agree.