

(1926) 07 PAT CK 0014

In the Patna High Court

Chote Lal Nand Kishore Nath Shah Deo

APPELLANT

Vs

Tula Singh and Others

RESPONDENT

Date of Decision : 13-07-1926

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71
Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1926 Patna 561

Hon'ble Judges : Bucknill, J;Adami, J

Bench : Full Bench

Judgement

Adami, J.—The only question which has been raised before us in this second appeal is the question whether, the suit was maintainable by the civil Court. It is not necessary for the purposes of this second appeal to give in any detail the facts; it is sufficient to say that the plaintiff's case was that the Maharaja of Chota Nagpur had granted a jagir of village Ghunsera to his remote ancestor Kalyan Singh.. In his family there was a custom of lineal primogeniture and the jagir descended from Kalyan Singh downwards to the eldest member of the senior branch of the family. It thus descended to Kalo Raut, then Jairam Singh, then Ram Singh and then to Baro Ram. Baro Ram had five sons, the eldest of whom was Jhingu, and the second Hathi Singh. Jhingu Ram succeeded to the jagir and was followed by his son Asman Singh who died childless, leaving a widow Mt. Budhan Kuer. On Asman's death, Hathi Singh's son Tula Singh, Hathi Singh being dead, claimed to succeed to the jagir as being the eldest member of the eldest branch after the death of Asman Singh. Mt. Budhan Kuer resisted his claim, and the result was that a settlement was arrived at through the assistance of one Bodh Singh. This Bodh Singh was the descendant of a person to whom the Maharaja of Chota Nagpur had granted an ijara thika of the lot Borokera in which Mauza Ghunsera was situated. According to the settlement arrived at.

2. Budhan Kuer was to remain in possession of the jagir during her lifetime and Tula Singh was to succeed her. Budhan Kuer died in 1918, and thereupon Tula Singh entered into possession of the village and granted half the village in

mokurrari to Plaintiffs Nos. 3 to 13. Defendant No. 1 is the son of the Maharaja of Chota Nagpur. He had purchased the rights of the ijara thikadars who were the sons of Bodh Singh, and also the Maharaja of Chota Nagpur gave him the lot Borekera as khorposh, and thus Defendant No. 1 was the landlord of the village. Soon after Tula Singh had entered into possession he was dispossessed by Defendant No. 1 and thereupon proceedings were taken u/s 145 of the Criminal P.C., the result being that Defendant No. 1 was found to be in possession on the 21st August 1919. The suit was instituted on the 8th September 1921.

3. The defence case was that the village Ghunsera had been granted in thika a very long time ago to two persons Mohan Singh and Ram Singh. Mohan Singh was succeeded by his son Sobran Singh whose sister married Jhingu Ram. Out of regard for the relationship, and for the purpose of supporting Sobran's sister's family, Sobran Singh and Ram Singh gave a jagir of village Ghunsera, cutting it out of lot Borekera to Jhingu Ram. Jhingu Ram held the jagir and was succeeded by his son Asman who died issueless and on his death the jagir came to an end. The grantors of the jagir, however, allowed Asman's widow Mt. Budhan Kuer to remain in possession for her lifetime, and after her death Defendant No. 1 claimed that he had a right to resume the jagir.

4. It is clear then that Defendant No. 1 is admittedly the landlord of the jagir, and the question arises whether in view of the provisions of the Chota Nagpur Tenancy Act the suit by the tenant to recover possession of the jagir, from which he complained he had been unlawfully ejected by his landlord or any person claiming under or through his landlord, could be maintainable in the civil Court.

5. The cause of action arose on the 21st of August 1919 and at that time the Plaintiff No. 1 under the provisions of the Chota Nagpur Tenancy Act, as it then stood, had a choice of making an application to the Deputy Commissioner u/s 71 of the Act to be put back in possession or to bring a suit in the civil Court and such suit in the civil Court could be brought at any time within three years from, the 21st of August 1919. u/s 139, Clause (5) of the Act, as it then stood, an application to recover possession by a tenant against his landlord could only be brought before the Deputy Commissioner. In 1920 the Chota Nagpur Tenancy Act was amended. The Bihar and Orissa Act VI of 1920, Section 38, amended Section 139 of the Act of 1908 and in Clause (5) of Section 139 for the words "all applications" the words "all suits and applications" were substituted, but this amendment made by Section 38 of the Act of 1920 did not come into force till the 1st March 1924 thus when the present suit was instituted, Section 139 stood in its original form. By Section 39, however, of the Act of 1920 a new Section 139-A was inserted in the Act and Under that section it was provided that:

no Court shall entertain any suit concerning any matter in respect of which an application is cognizable by the Deputy Commissioner u/s 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this act relating to an appeal, be final.

6. That new Section 139-A came into effect in Chota Nagpur on the 5th of November 1920 so that at the time the present suit was instituted that provision had been in force for about a year. Now the recovery of possession by a tenant from the landlord by whom he has been unlawfully dispossessed is a matter in respect of which an application is cognizable by the Deputy Commissioner; Section 71 and Section 139, Clause (8), show this and, therefore, ordinarily, u/s 139-A the present suit would not be cognizable by a civil Court. At the time that this amendment came into force more than a year had elapsed since the date of the cause of action and, therefore, no application could be made to the Deputy Commissioner u/s 71 Furthermore, before 1924, when Section 38 of the Act of 1920 came into force, there was no provision for the trial of a suit of the nature of the present one by the Deputy Commissioner. Therefore, from the 5th of November 1920 up to the 20th of August 1922, when the present suit would be barred, it was not possible for the present plaintiff to bring a suit in any Court, for u/s 139-A a suit in the civil Court was barred and there was no provision for the bringing of a suit in the Court of the Deputy Commissioner. The question then arises whether the Act of 1920 was intended or expressed to have retrospective effect, that is to say, whether it was intended to take away the rights of action which had already vested. Section 6 of Act X of 1897, the General Clauses Act and the corresponding section of the Bihar and Orissa General Clauses Act lay down that where those Acts or any Act made after the commencement of these Acts repealed any enactment hitherto made or hereafter to be made, then unless a different intention appears the repeal shall not (a).... (b).... (c)

affect any right, privilege, obligation, or liability, acquired accrued or incurred under any enactment so repealed, or ... (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced ... as if the repealing Act or Regulation had not been passed.

7. The general rule of interpretation is that when an enactment changes or takes away rights, it is not to be construed as retrospective unless there are express words to that effect, but when it only changes the mode of procedure it is to be applied to further actions. The Courts are very careful to protect a vested right and in several cases Judges have refused to allow suits to have retrospective effect although the language seems to imply that such was the intention of the Legislature, because, if the statute had been so construed, vested rights would have been defeated.

8. In the present case it is not a question of change of procedure, it is a question whether the right which the plaintiff had previous to the amendment of the Act to bring a suit on his cause of action can be taken away by the amending Act. It is more than a matter of procedure, it touches a right which was in existence at the time of the passing of the amending Act. The direction that suits of a certain kind shall be tried in a certain Court and not in another Court may be a matter of

procedure, but the amendment in this case, if insisted on, would take away from the plaintiff his vested right to bring an action, and the Courts will be very slow to allow such a right to be taken away by the Amending Act. It may be said that since the suit was instituted after the passing of the Amending Act, it is not a question of retrospective effect. But, however that may be, the fact remains that the Amending Act has deprived the plaintiff of a vested right and it is certain that it was not intended by the Legislature that such a right should be taken away. In my opinion, it was quite right that the civil Court should in the circumstances entertain the suit.

9. In the case of *Manijhoori Bibi v. Akel Mahamud* 17 C.W.N. 889 and *Gopeshwar Pal v. Jiban Chandra* [1914] 41 Cal 1125 the question was whether an Act amending the provisions of the law with regard to a period of limitation has retrospective effect. In the former case, *Mookerjee, J.*, after consideration of the English case-law on the point stated:

It has been repeatedly laid down that in the absence of clear words to that effect a statute will not be construed as taking away a vested right of action acquired before it was passed.

10. Further he remarked:

To hold that this amended provision applies to suits in respect of dispossession which has taken place more than two years before the enactment of the new law is to maintain the position that the Legislature intended the litigant to accomplish what is impossible, in the nature of things; for him to do, in other words, to prescribe that his right are forthwith extinguished without previous notice and without opportunity afforded to him to escape the operation of the new law. To put the matter briefly, if this view is to be supported, we must hold that the Legislature acted in a most unreasonable manner i.e., that the legislature intended to penalise all under-raiyats who had been dispossessed by their landlords more than two years before the commencement of the new statute because they wanted to enforce their rights in a Court of Justice within the period of limitation allowed at that time by the Legislature.

11. In the second of the two cases above cited, it was pointed out that a right of suit is a vested right, and that where in accordance with the provisions of the amending Act, a suit could be brought after the passing of the amendment the amendment would apply to the suit, but where it could not be brought after the amendment the amendment would have no application.

12. In any case, though the plaint shows that the plaintiff claims to be a tenant seeking recovery of possession from his landlord who has dispossessed him, there are indications in the plaint that the real questions between the parties was whether the plaintiff was entitled to succeed as jagirdar to the property. The plaintiff asked for a declaration of the title but this mere relief, when asked for, need not always take away the jurisdiction of the Deputy Commissioner. In a case decided lately by me (Second Appeal No. 669 of 1923) the question

between the parties was whether the tenant was an occupancy tenant or a non-occupancy tenant so that the question of the status of the tenant made no difference in determining whether the suit was a suit by a tenant to recover possession from his landlord.

13. As I have said the whole question depended on the decision of the question whether Jhingu's jagir had come down to him from his direct ancestors or whether it had been granted to Jhingu for the first time. If it was granted to Jhingu for the first time, then the plaintiff would have no claim, for on Asman's death the landlord would be entitled to resume: On the ground that there was a substantial question of title to be decided and on the ground also that the vested right of the plaintiff could not well be taken away by the Amending Act, I am of opinion that the suit was properly triable by the civil Court and that there is no reason to interfere.

14. would dismiss the appeal with costs.

Bucknill, J.

15. I agree.