

(1934) 11 PAT CK 0019

In the Patna High Court

Case No : Appeals Nos. 1204 and 1146 to 1453 of 1932

Damri Ahir

APPELLANT

Vs

Kesho Prasad Singh and another

RESPONDENT

Date of Decision : 22-11-1934

Acts Referred:

Citation : (1934) 11 PAT CK 0019

Final Decision : Dismissed

Judgement

Macpherson, J.—These nine appeals arise out of five rent suits as shown above. The rent suits and a title suit instituted at the same time relate to distinct portions of an area of 365 bighas of which Panchkauri Ahir took settlement from the Dumraon estate in the year 1889 and which is depicted in a useful sketch map made by the trial Court and reproduced at p. 10 of the paper book. In the title suit the Raj sought recovery of possession of plots 42 and 40-2 as being zirat wrongly seized by the defendant, Panchkauri, in 1333 F. It was found that the two plots were in Panchkauri's original settlement of 365 bighas constituting the north of the area and the suit was dismissed and there is no second appeal.

2. The five rent suits, of which suits 1 to 4 were against Panchkauri and suit No. 5 against his brother, Damri, related respectively to 75, 75, 50, 75 and 50 bighas, which with the area covered by the title suit made up 385 bighas and are the plots on the Raj map (and in red on the sketch note) numbered, 35, 34, 31, 32 and 33 and 41, respectively. The suit against Damri was based upon a settlement on patta, Ex. P., with him in 1904 and the fact that in a title suit of 1912 to eject him after the expiry of the term of the patta he was found to* have a right of occupancy. Besides the defences taken in the other suits, Damri pleaded that the suit was bad for defect of parties because Panchkauri also was a necessary party. The general defences of plea of payment and non-maintainability of the suit on the ground that the whole area of 365 bighas was Panchkauri's kaimi holding and only a single suit could be brought for the rent, were rejected by the Subordinate Judge who gave a decree in suits 1 to 3 for

rent as claimed and in suit No. 4 at Rs. 4-8-0 per bigha only instead of Rs. 5 claimed, but he rejected the claim for damages and refused to give costs in these suits. Suit No. 5 he dismissed altogether, upholding the defence of defect of parties. Both parties appealed from the decisions in suits 1 to 4 and the plaintiff against the decision in suit No. 5. The plaintiff's appeal in all suits in respect of damages succeeded but it failed in the the claim that the rate of rent in suit No. 4 should be Rs. 5. The learned District Judge also decreed suit No. 5 on the ground that cosharer tenants of a holding are jointly and severally liable for rent in respect thereof and consequently the plaintiff may bring the suit against one or some of them and so Damri could be sued alone, even apart from the fact that the lease was in his name alone, if the plaintiff be content with a money decree instead of a rent decree.

3. The four appeals of the defendant, Panchkauri Ahir, were dismissed, the four pleas submitted being rejected and the only one of them which concerns us in second appeal is the maintainability of the suits. Appeals have been preferred from each decision of the lower appellate Court as shown in the heading. The first point raised by the learned Government advocate on behalf of the appellants is that damages should not have been awarded in the circumstances. But the grounds of fact upon which they were denied to the plaintiff by the learned Subordinate Judge were expressly negatived in appeal, so that no question of law arises and the appeals on this this point are without merit. Moreover, interest under S. 67, Ben. Ten. Act, would nearly equal the damages allowed, and the learned Government advocate therefore did not press them.

4. The main attack upon the decision of the Court below is directed against the finding that five separate suits for rent lie. It is claimed that the area of 365 bighas within which Panchkauri has been cultivating since his settlement in 1889 is a single holding and there has been no agreement to split it up. The finding of the Courts below is that the guzasta holding of:

365 bighas has been spilt up into separate holdings by consent of the parties and the defendants are by their conduct estopped from raising this objection.

5. Now there has been much litigation between the parties. In particular, the Raj purporting to treat the land as zirat made settlement with the pro forma defendants (whose interest it now holds). One result was that at the cadastral survey some portion of the holding in rent suit. No. 1 was entered in khewat No. 5 of the pattadar and some portion covered by rent suits Nos. 2 and 4 was entered in khewat No. 4. (The rest of Panchkauri's tenancy was not included in that survey as being diara). In 1917 two suits were brought by Panchkauri against the Raj and the pattadars of khewats 4 and 5 the final decision in which was that the pattadars were entitled to realise rent from Panchkauri but only at the old rates at which he had taken settlement and not at the rates noted in the pattas or the cadastral survey khatians. It appears that Panchkauri had been in the habit of paying rents direct to the Raj in the name of the several pattadars for the areas of his tenancy which were under lease to them respectively. In

1919, Panchkauri, brought a suit against the Raj and the relevant pattadars for declaration that the lands (75 bighas and 50 bighas, in all 125 bighas), covered by the present rent suits 3 and 4 were part of his kasht guzasta of 365 bighas, Ex. G, a decision of 16th June, 1922, shows that the claim with regard to 50 bighas which is the subject-matter of rent suit No. 3, was decreed on compromised that the compromise included besides the costs of the suit against the pattadar, Deonarain, and arrears of rent, nazarana at Rs. 5 per bigha on 50 bighas and rent at the same rate. An inference is possible that the parties treated the area as a distinct, if not however a new tenancy. Ex. D, a judgment in that suit of 5th July 1920, shows that with regard to the 75 bighas the suit was decreed and that it was held that a decree obtained by the Raj against the pattadars was collusive and not binding on the plaintiff. The history of the matter is fully dealt with in the judgments of the Courts below. It is difficult to see how any fault can be found with their finding of fact that: "there is overwhelming evidence to show that the defendant had consented to the splitting up of their entire guzasta plot of 365 bighas."

6. The separate payment of rent for the lands entered in the separate pattas as evidenced by the rent receipts, the course of the litigation above referred to and in particular the compromise, Ex. G (1), the pattas Exs. P and P (1) by Damri in 1904 and 1905, respectively for the northern block of 83 (50 + 33) bighas odd including the area in suit No. 5 are all points from which separately and in combination the Courts might draw such an inference. It was also not the attitude of Panchkauri himself that the pattas granted by the Rai were necessarily ineffective his point was that in any event they did not affect his raiyati tenancy and both in 1934 and 1905 when Exs. P and P (1) were executed and after the execution of the pattas he acquiesced in separate payments being made for separate areas within his tenancy. There is nothing surprising in the fact since rent was assessed at different periods for different areas according as they were brought under cultivation. In my judgment the decision of the Courts below is correct; but whether it is correct or not, it is a decision of fact with which in the absence of an error of law such as I am unable to find, it is not open to this Court to interfere in second appeal. The main contention therefore fails.

7. In second appeal No. 1204 arising out of rent suit No. 5, it is urged that it is res judicata that Panchkauri is a necessary party to the suit. The plea is based upon the judgments in the ejectment suit No. 970 of 1912 brought against Damri. The defendant there objected that Panchkauri was a necessary party, and it was held that he was a necessary party to the suit as it was really Panchkauri who took in Damri's name the settlement which had expired and he was the eldest member of the family. But apart from the fact that the decision of that suit appears actually to have proceeded on the merits and not on the question of maintainability, it is open to the landlord to sue a co-sharer in a tenancy* since the co-sharers are jointly and severally liable in respect of the rent. He is entitled to a decree against such defendant and it is not a matter for concern in the suit itself whether the decree obtained is a rent decree or a money decree, and

indeed he must be presumed to accept the less valuable relief if he has not framed his suit so as to obtain a rent decree. The latest decision of this Court on this point is Kuman Das v. Maharajadhiraja Kameshwar Singh Bahadur, 1935 Pat. 146. In point of fact, the patta, Ex. P, was granted in 1904 to Damri himself and the lessor is entitled to look to the lessee therein, named. In addition, in para. 10 of his written statement Damri sets out that in the previous suit "it has been held that this defendant is the principal tenant in respect of the rent claimed land." The decision of the lower appellate Court on this point is unassailable. Accordingly these appeals are without merits and they are dismissed with costs.

James, J.

8. I agree.