
(1920) 08 PAT CK 0002
In the Patna High Court

Debi Deyal Pandey and Others

APPELLANT

Vs

Ram Sakal Pathak and Others

RESPONDENT

Date of Decision : 13-08-1920

Acts Referred:

Citation : 58 Ind. Cas. 544

Hon'ble Judges : Sultan Ahmed, J; Coutts, J

Bench : Division Bench

Judgement

Coutts, J.—This is a Second appeal against the decision of the Subordinate Judge of Arrah, setting aside the decree of the Munsif in a suit for declaration of the plaintiffs' title to, and for confirmation of possession of, 3 bighas odd land. The facts of the case are shortly as follows:

One Tulsi Lohar had an occupancy holding of 9 bighas odd land. In the year 1878 he sold 6 bighas odd to the father of Ramchiz, the defendant No. 14 in this suit. In 1879 he sold the remaining 3 bighas odd to the ancestors of the plaintiffs. Subsequently, the plaintiffs' case is that Tulsi died and his son Harakh Lohar left the village. In 1899, the landlord, who is the defendant No. 1 in the present suit, sued Harakh Lohar, the son of Tulsi, and the purchaser of the 6 bighas odd land for rent. He obtained a decree and in execution thereof purchased the entire holding on the 16th of May 1900. In 1901 he obtained dakhil dahani and in 1910 he settled the entire 9 bighas odd land with the defendants Nos. 2 to 9. At the time of the settlement in 1912 the names of the defendants Nos. 2 to 9 were recorded. In 1913, the present suit was brought by the plaintiffs on the allegation that they had purchased the 3 bighas odd, for which they are suing, in the year 1679 and that they had been recognised by the landlord. The suit was dismissed in the Court of first instance, but on appeal it has been decreed by the learned Subordinate Judge.

2. The main question in the appeal is whether the plaintiffs were recognised by the landlord. The only evidence of recognition which they are able to produce is a receipt of the year 1900 granted to them by the landlord's Tehsildar. In the case

of Wyatt v. Sheo Gobind Sahu 36 Ind. Cas. 777 : 1 P.L.J. 414 : 3 P.L.W. 88 it was held that the granting of a rent receipt by a Tahsildar did not amount to recognition of a transfer. In the case of Janki Sahu v. Thakur Run Bahadur Singh 39 Ind. Cas. 398 : 2 P.L.J. 231 : 1 P.L.W. 658 this decision was followed and it was held that receipts granted by a Gomasta did not amount to recognition of a transfer. The reason for this decision was that a Gomasta is ordinarily an agent with an authority of a limited kind and a person dealing with such an agent is bound to assure himself that the limits of the agent's authority are not exceeded. The learned Judges in that case relied on the Privy Council decision in the case of Russo-Chinese Bank v. Li Yau Sam (1910) A.C. 174 : 79 L.J.P.C. 60 : 101 L.T. 689 : 26 T.L.R. 203, in which Lord Atkinson in delivering judgment stated the rule of the law in the following terms:

If the agent be held out as having only a limited authority to do on behalf of his principal Acts of a particular class, then the principal is not bound by against done outside that authority, even though it be an act of that particular class, because, the authority being thus represented to be limited, the party prejudiced has notice, and should ascertain whether or not the act is authorised.

3. The case of Juthan Lal v. Ram Dat Singh 51 Ind. Cas. 996 as also the cases of Moharani Beni Pershad Koeri v. Goberdhan Koeri 6 C.W.N. 823 and Sri Maharani Beni Pershad Koeri v. Earn-dahin Pandey 10 C. W. N. 216 are to the same effect. The latter two cases are the cases of Tahsildars as in the present case and, in my opinion, the view of the law which has been taken in all these cases is correct. It is true that in Srikishun Prasad Panjiar v. Musammat Jeohasi Kuer 45 Ind. Cas. 294 : (1918) Pat. 210 : 4 P.L.W. 316 to which we have been referred, one of the learned Judges was of opinion that the onus was on the landlord to show that his agent had not got authority, but that opinion was expressed in regard to the particular facts of that case and moreover it was not necessary for the decision of the matter which was before the learned Judges. The correct view of the law has as I have already said, been, in my opinion, expressed in the cases to which I have referred. In the present case it has not been shown that the Tahsildar had authority and the grant of the receipt by him cannot in any way amount to recognition of the transfer.

4. The next point urged is that there has been abandonment. It does not appear, however, that this is so.

5. Lastly it has been contended that Harakh Lohar was dead at the time the decree was obtained by the landlord and that consequently it was void as against him. The lower Appellate Court has found that this is so, but in coming to this conclusion the learned Subordinate Judge has obviously made a mistake. He has based his decision on the pleadings and has said that as it was specifically alleged in the plaint that Harakh Lohar was dead before the suit was brought by the landlord and as this allegation has not been traversed, it must be taken as correct. The allegation, however, was distinctly denied in the written statement of defendants Nos. 2 to 8 and as there is no evidence that Harakh was dead at the

time of the suit, we must take it that he was alive.

6. The result then is that the decree appealed against must be set aside. I would accordingly set it aside and decree this appeal with costs.

Sultan Ahmed, J.

7. I agree.