
(1921) 05 PAT CK 0013
In the Patna High Court

Debi Lal Sah and Others

APPELLANT

Vs

Ram Bibeki Singh

RESPONDENT

Date of Decision : 12-05-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103
Estates Partition Act, 1897 — Section 48, 50

Citation : 63 Ind. Cas. 194

Hon'ble Judges : Jwala Prasad, J

Bench : Single Bench

Judgement

Jwala Prasad, J.—This appeal arises out of a suit instituted by the plaintiff before the Settlement Officer of Motihari on the 14th of May 1917 for the correction of an entry in the Survey Record of Rights which was finally published on the 15th January 1917.

2. The land in dispute is 5 bighas in area and formerly bore Khasra No. 233, which corresponds to the present Survey Khasras Nos. 803, 804 and 805. The land was recorded in the present Survey as the zeraif land of defendant Ram Bibeki Singh, son of Niranjana Singh, in Khewat No. 4. In the Survey the plaintiffs claimed the land as their mukarrari on the basis of a settlement made by the defendant and his co-sharers at an annual rental of Rs. 1-8 3, which by the Collectorate partition among the co-sharers in 1911 fell to the patti of the defendant bearing Touzi No. 1319. The land was, however, recorded at the Survey as the zeraif land of the defendant in Khata No. 355, Khewat No. 4. The plaintiffs' objection regarding the said entry was disallowed u/s 103 of the Bengal Tenancy Act and the entry originally made was confirmed. Accordingly, the land stands recorded in the finally published Record of Rights as the zeraif of the defendant. Hence the plaintiffs' suit.

3. The plaintiffs claim to be "in possession and occupation of the land as their mukarrari by paying rent and taking receipt therefor, by making Hunda settlement of the same," on the basis of the settlement made by all the

proprietors before the Collectorate partition; vide paragraph 3 and the concluding portion of paragraph 5 of the plaint.

4. The defendant resisted the plaintiffs' claim, denying the mukarrari settlement of the land and the possession of the plaintiffs as alleged by them.

5. No mukarrari lease was filed, to prove the partition proceedings. All the proprietors filed an application admitting the mukarrari grant, at four annas per bigha, in favour of the plaintiffs with respect to the land in question. Accordingly, the land was recorded as the plaintiffs' mukarrari in the partition proceedings; vide orders dated the 3rd January and the 6th February 1911 (Exhibits 5-A and 5-B). The plaintiffs also produced rent receipts (Exhibits 1-A and 1-G) granted by the proprietors separately with respect to the proportionate rent due to them in respect of the mukarrari land by the defendant. These receipts were granted on the 2nd of September 1907 and were in respect of the years 1304 to 1314 (1897-1907). The partition proceedings commenced in 1909 according to the aforesaid order-sheet. The receipts stated that 5 bighas were given to and held by Beerbal Sahu, ancestor of the plaintiffs, in perpetual mukarrari at the rate of 4 annas per bigha. The receipt granted by Ram Bibeki, defendant, is (Exhibit 1-D). The other receipts are by the other co-sharers. Taken together these receipts are on behalf of the 16 annas maliks. Both the Courts below have held that they relate to the land in dispute. Consequently all maliks admitted the mukarrari granted to the plaintiffs and their possession over it in the year 1907. The mukarrari interest was further admitted by the maliks in the partition proceedings in 1911 and the assets of the land were calculated on the basis of the aforesaid rental of 4 annas per bigha, by the Deputy Collector, for as observed by him in his order (Exhibit 5-B) referred to above, all the proprietors accepted the aforesaid mukarrari and the rate of rent. The Courts below have dismissed the plaintiffs' suit on the ground that "the plaintiffs have failed to prove that they ought to have been recorded as being in possession through their tenants." Upon the findings of the Court below corroborated by the evidence on the record, notably the admissions of the defendant, and his co-sharers, there can be no doubt that the plaintiffs proved their mukarrari right in the land in suit. According to the Court below the plaintiffs have failed to prove their actual possession over the land in question. Under the present Partition Act (Act V of 1897) a Record Of Rights is required to be prepared, just as in the Survey and Settlement proceedings under the Bengal Tenancy Act, in the presence of the proprietors and the tenants who are given notice of, and are deemed to be parties to, the preparation of the Record of Rights. The Record of Rights, prepared under the aforesaid Act for the purpose of partition, is binding upon the landlords, inasmuch as the assets of all the lands in the estate under partition are taken into account in making equal and equitable partition. The land in question was recorded as the mukarrari of the defendant at a rental of Rs. 1-2-3 in the partition proceedings with the consent of all the landlords. It fell into the patti of the defendant proprietor. He, therefore, accepted the mukarrari at that rental and cannot now be permitted to claim the land as his zeraif, thereby

raising the assets proportionate to his share allotted to him by the partition. He is bound by the principle of estoppel from claiming the land as his zeraif against the plaintiffs' claim to hold the land as their Mukarrari at the aforesaid rental; vide Sections 48 to 50 of the Estates Partition Act (Act V of 1897), The defendant is farther estopped from questioning the mukarrari right of the plaintiffs on the ground that the registered receipts granted by him and the other proprietors (Exhibits 1 to 1-G) were not on payment of rent, as observed by the lower Appellate Court, nor that the mukarrari was pot bona fide or operative as held by the Assistant Settlement Officer. A true construction of the receipts in question is that the plaintiffs were in possession of the land in question as their mukarrari from the years 1304 to 1314, that is, up to 1907. The partition Record of Rights also has the same effect and raises the presumption as to the possession of the plaintiffs over the land in suit in the year 1911, according to the admission of the defendant and his co-sharers. The defendant took possession of the separate putti allotted to him by the Batwara subject to the aforesaid mukarrari. In this view the onus of proof rests upon the defendant. No doubt, the revisional Survey recorded the land in the possession of the defendant as his zeraif and u/s 103(b) of the Bengal Tenancy Act he is entitled to avail of the presumption as to the correctness of the entry, That presumption arises in all proceedings, whether in a proceeding u/s 105 or 106 of the Bengal Tenancy Act or in any other proceeding or suit, civil or criminal. Thus both the parties have presumptions in their favour. The plaintiffs have the presumption of the Record of Rights prepared in the partition proceedings under Act V of 1897, and the defendant has the presumption of Section 103(b) of the Bengal, Tenancy Act. The question is which of these presumptions should prevail, The plaintiffs dispute the correctness of Survey Record of Rights in a proceeding before the Settlement Officer by way of special kind of suit contemplated by Section 106 of the Bengal Tenancy Act. In the circumstances of the present case I am of opinion that the Court has to look into the evidence adduced by both the parties in order to find out whether the Survey entry is correct or not. This view is supported by the case of Janki Kuer v. Saudagar Ram 56 Ind Cas. 417 : 1 P.L.T. 221 : (1920) Pat. 177. That decision has followed the decisions of the Calcutta High Court in Sheonandan Persad Sukul v. Bacha Raut 4 Ind. Cas. 54 : 9 C.L.J. 284 and Bagha Mowar v. Ram Lakhan Misser 41 Ind. Cas. 804 : 27 C.L.J. 107. The Courts below have, to my mind, misconceived the scope and object of the Record of Rights prepared under the Estates Partition Act (Act V of 1897) and consequently they have not considered the evidence of the plaintiffs in the case, and as a matter of fact have not referred to it at all. The finding as to possession is based entirely upon the criticism of the evidence adduced by the defendant. The conclusion arrived at by them is consequently illegal. I would, therefore, set aside the judgment of the Court below and remand the case for a finding as to possession upon a consideration of the evidence of both the parties.

6. The costs of remand will abide the result of the litigation.