

(1917) 01 PAT CK 0012
In the Patna High Court

Debi Raut

APPELLANT

Vs

Ashutosh Bhattacharja and Shib Lal Singh and Others

RESPONDENT

Date of Decision : 29-01-1917

Acts Referred:

Citation : AIR 1917 Patna 258 : 39 Ind. Cas. 561

Hon'ble Judges : Atkinson, J

Bench : Single Bench

Judgement

Atkinson, J.—This case comes before me on second appeal from the decision of the Subordinate Judge of Monghyr reversing the decision of the Munsif in this case dismissing the plaintiff's suit. The action was brought by the plaintiff for a declaration that no custom or usage exists whereby under-raiyats can acquire occupancy rights in their holdings in Mauza Bhaluka appertaining to Taluka Mallapur which is the village and estate in which the lands in dispute are situated; and that the defendants who are recorded as shikmi dakhildars in the Record of Rights are not dahhildars but are under-raiyats having no occupancy rights. The learned Munsif considered this case in great detail, and he arrived at the clear conclusion that the entry in the Record of Rights was not rebutted, and that all the evidence was in support of the case put forward by the defendants. The Record of Rights was finally published on the 7th of November 1909; and this suit was not instituted until the 27th June 1913. The plaintiff is a purchaser at a Court sale of the raiyati interest in Mauza Bhaluka appertaining to Taluka Mallapur; and he claims the declaration set out above against the defendants of the first party who were under-raiyats of the raiyat whose interest he purchased at the Court sale. An under-raiyat cannot acquire occupancy rights unless by custom. In 1908 it appears that the Settlement Officers went with great detail into the enquiry as to whether or not under-raiyats in this village, and on this estate, were entitled to occupancy rights, and they--that is to say the Settlement. Officers recorded that the defendants--had occupancy rights and in the Record of Rights they were recorded as shikmi dakhildars. The present plaintiff brought a suit to eject certain under-raiyats in this village from their

holdings. At the time that that suit was brought the Record of Rights was published; and the case proceeded to the High Court of Calcutta, and the High Court of Calcutta decided that the plaintiff was not entitled to eject the second party defendants in that suit though they were under-raiyats because they had acquired occupancy rights; and that, therefore, the plaintiff had no right to eject them. The High Court decided this question with the Record of Rights before it; and it seems to me that that decision meant that in respect of this property the under-raiyats throughout the village estate are recognised as acquiring or capable of acquiring occupancy rights. Mr. Naresh Chander Sinha says that that decision only applies to the particular holding in suit in that case, and that though a custom may have been established qua that particular holding, it does not apply to the holding in dispute in this action. With this contention I do not agree. I think that if a custom or right was established it was established in its entirety with regard to the whole estate and not only as to a p Article The plaintiff contends that he is not estopped by that decision from bringing this action and that he is entitled now to challenge the correctness of the entry in the Record of Rights. I do not think that the judgment which was pronounced by the High Court of Calcutta on the 25th of February 1915 operates in any sense as an estoppel; but it is a strong and cogent piece of evidence which must be considered in determining the rights of the parties in the present case. The learned Judge on appeal, in a very cursory and unsatisfactory judgment differing as he was from the lower Court, never considered at all the effect of the judgment of the High Court of Calcutta and its bearing upon this case. Having overlooked this judgment shows a disregard on his part of a very material matter which should have affected his consideration and possibly his decision. The learned Judge relies upon four documents for the purpose of endeavouring to show that the entry in the Record of Rights was rebutted. The documents he relies upon are Exhibits 1 and 2 and Exhibits 3 and 4. Exhibits 1 and 2 are surrenders by tenants of their holdings disclaiming any occupancy rights; and Exhibits 3 and 4 are kabuliyats to the same effect. The learned Judge thought that these four documents were sufficient to justify him in holding that the Record of Rights which had been finally published in 1909, and which remained unchallenged for two years after the decision pronounced by the Calcutta High Court, was rebutted. In my opinion the learned Subordinate Judge is wrong in so thinking. The documents he relies upon were documents executed in the year 1907 and probably for a designed purpose. The learned Judge's judgment is so unsatisfactory that it cannot stand. Having regard to the decision which has been pronounced by the Calcutta High Court and having regard to the careful and well considered judgment of the learned Munsif in this case I hold that in point of law these defendants are accurately recorded in the Record of Rights as shikmi dakhildars; and that the plaintiff is not entitled to the relief sought for in the present case or to any part thereof. I accordingly allow this appeal, set aside the order of the lower Appellate Court and restore and affirm the order of the Munsif; and I award the defendants their costs of this appeal, their costs in the lower Appellate Court and their costs in the Munsif's Court.