

(1934) 01 PAT CK 0029
In the Patna High Court

Deoraj Singh and Others

APPELLANT

Vs

Ramjiwan Rai and Another

RESPONDENT

Date of Decision : 24-01-1934

Acts Referred:

Citation : AIR 1934 Patna 259

Hon'ble Judges : James, J; Fazl Ali, J

Bench : Full Bench

Judgement

Fazl Ali, J.—These appeals arise out of two suits brought by the appellants to recover damages for the use and occupation of certain trees and for assessment of fair rent thereon. According to the survey khatian the land on which these trees stand are recorded as plaintiffs' bakasht; but in the remarks column it is noted that the trees are in the possession of the defendants. There is no entry in the khatian to suggest that the trees are held rent free by the defendants and in fact, Ex. C the decision of the Assistant Settlement Officer upon which the entry in the khatian is based clearly negatives their claim to hold the trees rent free. It is stated in Ex. C that:

it is a fact undisputed that mahua phalkar is taken for every mahua tree growing on such groves. The rates are annas 2 for a small tree and annas 4 for a big tree.

2. That phalkar is a kind of rent is apparent from the form of receipt prescribed in Schedule 2, Bengal Tenancy Act and also from Section 193 of that Act. Now the question whether the plaintiffs are entitled to recover rent for these trees has been dealt with by the lower appellate Court thus:

The question is whether under these circumstances the plaintiffs are entitled to damages for use and occupation or to an assessment of fair rent. The plaintiffs rely on the principle that, mere lapse of time, however great, will not bar the landlords' right to collect rent. The defendants rely on their assertion of a hostile title before the settlement officer and contend that the landlords are not entitled to an assessment of rent on the trees for which rent has never been paid ... I

think it is a fair inference that the trees were originally planted with the consent of the landlord, but this will not necessarily create a tenancy in respect of the trees. I think that the fact that no rent has ever been paid for these trees combined with the tenants' assertion at the time of survey and the landlord's failure for a period of more than 12 years subsequent to the survey to enforce any right to collect rent for these trees justifies the inference that the terms on which these trees are held do not involve any obligation on the part of the tenants to pay rent.

In my opinion, the facts stated by the learned District Judge do not warrant the inference which he has drawn from them, namely, that:

the terms on which these trees are held do not involve any obligation on the part of the tenants to pay rent.

3. It is clear that the mere fact that the landlord has failed to collect rent for the trees for a number of years cannot deprive him of the right to claim rent if that right is found to exist. The question of limitation again does not arise in these cases, because it has been clearly stated in Ex. C that it was not disputed before the Assistant Settlement Officer that the landlord was entitled to realize phalkar for the mahua trees. It is not disputed that the trees stand on the plaintiffs' bakasht land and I do not see how the defendants can resist the plaintiffs' claim for assessment of phalkar rent in these circumstances. The Assistant Settlement Officer did not apparently investigate what phalkar was realised for trees other than the mahua trees because he appears to have been under the wrong impression that it was not necessary to record phalkar for the trees in the khatian and that it was a kind of tax levied by the landlord.

4. The plaintiffs have placed on the record certain judgments Exs. 5 and 6 which were delivered by the Subordinate Judge of Shahabad in cases similar to the present ones in which a rent of 8 annas was fixed for each mango tree and a rent of annas 4 was fixed for each mahua tree. Those judgments relate to other groves and the parties are also not the same as the parties to these appeals. It appears to me that these cases should be remanded to the Court below for the purpose of assessing fair and equitable phalkar rent for the trees in the groves in question. The lower appellate Court will determine such phalkar rent on a consideration of the evidence before it and may take or direct the taking of such further evidence as may be necessary for the purpose. After such phalkar rent has been determined the plaintiffs will be entitled to recover damages for the years in suit at the rate determined by the Court, provided that no portion of the claim is barred by limitation.

5. These appeals are therefore allowed with costs and the cases are remanded to the Court below for disposal according to law in the light of the above remarks. There will be one set of hearing fee.

James, J.

6. I agree.