
(1965) 06 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1080 of 1956

Dewan Majhi and Others

APPELLANT

Vs

Sukhu Majhi and Others

RESPONDENT

Date of Decision : 02-06-1965

Acts Referred:

Citation : 70 CWN 1050

Hon'ble Judges : Laik, J

Bench : Single Bench

Advocate : Sib Kumar Majumdar, for the Appellant; Narottam Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Laik, J.—The short question raised in this second appeal, on transfer from the High Court, Patna, is as to how a Korkar right can be acquired by the defendants respondents, under the provisions of the Chhotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908), hereinafter I would refer as the Act. The land in dispute is in one plot but in two blocks--A and B, within Mouza Keshargarh, P.S. Hura, District Manbhum, previously within the State of Bihar, now in the District of Purulia within the State of West Bengal. The whole plot was a big plot, recorded as "jungle", in the landlord's Khewat No. 1, i.e., in khas possession of the grandfather of pro-forma defendant No. 5, who is Raja Jyoti Prosad Singh Deo of Panchkot. The area of the land in Block "A" is 0.45 acres and that of Block "B" is 0.15 acres.

2. The plaintiffs' case in short was, that they had taken settlement from the landlord of the disputed land. They reclaimed the same at a great cost and labour but the defendants forcibly uprooted the paddy seedlings from the plots on August 12, 1948 and reploughed the same. Hence, the plaintiffs prayed for declaration of their title in respect of the said two portions of land. They also claimed damages to the extent of Rs. 40/-.

3. The main defence was that they are settled raiyats of the village and they had their raiyati lands, almost contiguous to the disputed land. It was said that the father of defendants Nos. 1 and 2 and the father of defendants Nos. 3 and 4 levelled the land by filling up the ditches and removing the stones and had been in possession of the same by growing "Til", "Kurti", "Kodo", etc. They prepared the paddy fields (khets) and they are in possession by growing paddy therein for 14/15 years, preceding the date of the suit. Thus they had acquired a right of Korkar land under the Act. The landlord therefore had no right to settle the same with the plaintiffs.

4. The learned Subordinate Judge, Purulia decreed the suit. The title of the plaintiffs was declared as well as the right to recover possession was granted in respect of both the Blocks--A and B. The amount of damages was allowed in part. Being aggrieved, the defendants preferred an appeal. The learned District Judge allowed the same with respect to the land of Block "B" but dismissed the same with respect to Block "A". In other words, the plaintiffs' right and title were declared with respect to Block "A" but the decree in favour of the plaintiffs, regarding Block "B" and mesne profits was set aside. Against the said decree of dismissal, so far as the land of Block "B" is concerned and for damages, the instant second appeal has been preferred on behalf of the plaintiffs.

5. It appears that a different consideration arose, with regard to the portion marked "B", because according to the learned Judge this was already converted into fields (khets) by reclamation. This portion of land lies through a streamlet (jor or sroth). A big ail or ridge (mota aar) has been put in the bed of the streamlet in order to convert the land into a paddy field. According to the learned Judge, as the defendants did reclaim the Block "B" land, before the settlement was taken by the plaintiffs and that they being settled raiyats of the village, they had acquired a right of Korkar and therefore the "the plaintiffs" right, if any, with respect to this piece of land was barred by limitation, under the Chhotanagpur Tenancy Act."

6. In my view, the learned District Judge totally overlooked the relevant provisions of the Chhotanagpur Tenancy Act relating to Korkar rights. He erred in law by applying the old provisions of section 64 of the Act which had been substituted in the year 1947, by Bihar Act XXV of 1947.

7. Old section 64 of the Chhotanagpur Tenancy Act as amended up to 1939, reads as follows :--

64. (1) The oral or written consent of the landlord for the conversion of land into korkar shall be required in every case except--

(a) where the land was, before such conversion, included in the tenancy of a cultivator who has acquired a right of occupancy in it, or

(b) where, by the custom or usage of the village, tenure or estate, such consent is not necessary.

(2) It shall be presumed, unless and until the contrary is proved, that the said consent is not required--

(i) where any land in a village, other than land known as manjhihas or bethkheta, is entered in any register prepared and confirmed under the Chhotanagpur Tenures Act, 1869 by a member of a Bhuinhari family, or

(ii) where any land in a village is entered as a Mundari khuntkattidari tenancy, or any tenant of land in a village is entered as a Mundari khuntkattidar, in any record-of-rights finally published under this Act or under any other law in force before the commencement of this Act, by a member of a Mundari khuntkatti family, who holds lands in such village.

(3) Where the consent of the landlord is required by this section for the conversion of land into korkar, such consent shall be deemed to have been given, if, within two years from the date on which the cultivator commenced such conversion, the landlord has not made an application to the Deputy Commissioner for the ejectment of the cultivator and no cultivator who is a tenant or resident of a village, shall be ejected from land of that village, which he has commenced to convert into korkar, otherwise than upon such an application.

8. Sec. 64, as substituted in the year 1947, runs as follows :--

64. Conversion of land into korkar with Deputy Commissioner's permission.--

(1) Notwithstanding anything contained in any record-of-rights or any custom or usage to the contrary, every cultivator or landless labourer resident of a village or a contiguous village shall have the right to convert land in that village into korkar with the permission of the Deputy Commissioner previously obtained.

Provided that no permission of the Deputy Commissioner shall be required under sub-section (1) to the conversion of land into korkar by a cultivator, where he was entitled on the date of the commencement of the Chhotanagpur Tenancy (Amendment) Act, 1947, (Bihar Act 25 of 1947), by virtue of any local entry in the record-in-rights or any local custom or usage to convert such land into korkar without the consent of the landlord.

(2) On receipt of an application for permission to convert land into korkar, the Deputy Commissioner shall in the prescribed manner serve on the landlord a notice of the date on which he intends to hear the application and after hearing the parties and holding such enquiry as he thinks proper, the Deputy Commissioner shall either grant or refuse the permission and his decision shall be final:

Provided that the Deputy Commissioner shall dispose of an application made under this section within a period of three months from the date of receipt thereof by him.

9. The learned District Judge, presumably under sub-section (3) of the old section 64, held that the right to eject was barred after two years, possibly

relying on the decision in Lal Sahi Palian and Others Vs. Deba Munda and Another, . No such provision however appears in the new section 64. This fact was overlooked by the learned Judge. The suit was instituted on September 10, that is, after the substituted section 64 came into force. Therefore I do not accept the contention of Mr. Chatterjee that the old section would apply. In my opinion the substituted section 64 would be applicable.

10. "Korkar" has been defined in section 3(xiii) of the Act which runs as follows :--

3 (xiii). "Korkar" means land, by whatever name locally known such as bahbala, khandwat jalsasan or ariat, which has been artificially levelled or embanked primarily for the cultivation of rice and--

(a) which previously was jungle, waste or uncultivated, or was cultivated upland, or which, though previously cultivated, has become unfit for the cultivation of transplanted rice, and

(b) which has been prepared for cultivation by a cultivator (other than the landlord) or by the predecessor-in-interest (other than the landlord).

11. Old section 65 was repealed by the Chhotanagpur Tenancy Act, 1947. It did not appear in this case that any permission of the Deputy Commissioner was obtained by the defendants for conversion of the land into korkar. Proviso to sub-section (1) of section 64 laid down where such permission of the Deputy Commissioner would not be required. In my judgment the condition precedent for the acquisition of the korkar right is, that a person must be a cultivator and that he was entitled on the date of the commencement of the Chhotanagpur Tenancy (Amendment) Act, 1947 to convert such land into korkar, without the consent of the landlord. It is nobody's case that the landlord's consent was obtained. Neither it was argued before me that the record-of-rights contains any entry of a korkar right in favour of the defendants. Mr. Chatterjee then relied on section 67 of the Act of 1947 in support of his contention, which runs as follows :--

67. Right of occupancy in korkar. Every raiyat who cultivates or holds land which he or any member of his family has converted into korkar shall have a right of occupancy in such land, notwithstanding that he has not cultivated or held the land for a period of twelve years.

12. In my view the said section provides as to when a right of occupancy can be acquired on the footing that the land has already been converted into korkar. In the present case we are concerned with the acquisition of korkar right itself and not with the acquisition of the right of occupancy, in korkar land.

13. The following decisions of the Patna High Court were cited on behalf of either party Lal Singh Vs. Arrah Municipality, ; Raghunandan Thakur Vs. Babu Kishundeo Narain Mahta and Others, ; Jhagru Mian and Others Vs. Raghunath Singh and Others, ; Parbati Kumari Vs. Doman Manjhi, ; Chandra Mohan Singh

and Others Vs. Butu Mian and Others, ; affirmed in Thakur Chandra Mohan Singh and Others Vs. Butu Mian and Others, .

14. All these decisions would not apply in deciding the present question because those were decided on the old section 64 of the Act, which is not applicable here. Some of the said decisions again merely rely on the earlier decisions. Some again deal with the acquisition of occupancy right in korkar land. No reported decision was cited before me on the interpretation of the substituted section 64 after the Chhotanagpur Tenancy Act was amended in the year 1947.

15. The learned District Judge failed to notice another important fact viz., that the Commissioner's report, which was in favour of the plaintiffs, was not challenged by the defendants. There was no finding by him that the presumption of correctness of the entry in the record of rights i.e., the land being in khas of the landlord, had been rebutted. The learned District Judge also failed to consider the effect of the plaintiffs' rent receipts (Ext. 2 series). He further committed an error by placing wrongly the onus on the plaintiffs to prove that the defendants had not acquired korkar interest. There is no finding by the learned District Judge that the defendants are either settled raiyats of the village or that they are cultivators. He assumed them to be so. There is no reason again as to why a different consideration would arise in respect of B Block of land. For all these reasons, the appeal is allowed and the portion of the judgment and the decree of the court of appeal below with regard to B Block of land and damages is set aside. The judgment and decree of the Trial Court are restored. There would be no order for costs in this appeal.