

(1938) 11 PAT CK 0032
In the Patna High Court

Dhrubeshwar Lal Singh Deo and Another	APPELLANT
Vs	
Kantu Laik and Others	RESPONDENT

Date of Decision : 16-11-1938

Acts Referred:

Citation : AIR 1939 Patna 276

Hon'ble Judges : Harries, C.J.;Agarwala, J

Bench : Full Bench

Judgement

Agarwala, J.—This appeal is by the defendants from a decision of the District Judge of Manbhum confirming a decision of the Subordinate Judge decreeing the plaintiff's claim. The plaintiff sued for partition basing his title on a purchase from Mahananda Chakravarty, who was himself the purchaser of the one-third share of one Sarobar in execution of a decree obtained by the Rajah of Pachet, the proprietor of the land in dispute, in 1902. The defendants claim that the whole of the estate, namely Ranipukur lot, which includes the property in dispute, was settled with them by the Raja in 1879. It is necessary to refer to a previous litigation respecting this land in order to decide the rights of the parties. Ranipukur lot was the property of the Raja of Panchot. Three brothers Chhatradhari, Gadadhar and Sarobar were the holders of a tenure including all the mauzas in Ranipukur lot.

2. The Raja instituted a suit for rent of the tenure against Chhatradhari in 1870 and obtained a decree. Another suit was instituted against the same person in 1874 and resulted in a decree. This was followed by a suit against all the three brothers which resulted in a third decree. In execution of these decrees, the tenure was put up to sale in 1878 and purchased by the decree-holder. In the following year, the decree-holder made a settlement with the father of the defendants. Thereafter three suits were instituted by two of the judgment-debtors and a son of the third to set aside the sale. The suit instituted by the son of Chhatradhari abated on account of the death of the plaintiff. The two suits instituted by Gadadhar and Sarobar failed in the first Court. In both these suits

the plaintiff Raja appealed. The appeals were heard together and were disposed of by one judgment.

3. They resulted in the decision of the trial Court being reversed and two decrees being prepared in favour of the defendants Gadadhar and Sarobar. In one of these suits, namely in the suit that had been instituted by Gadadhar, the father of the defendants appealed to His Majesty in Council impleading Sarobar as a pro forma respondent. Gadadhar died during the pendency of the appeal and Sarobar was then made his legal representative. The result of the appeal to the Privy Council was that the decision of the High Court in the suit instituted by Gadadhar was reversed.

4. As a result of these proceedings, the defendants now contend that what was purchased by the plaintiff's predecessor-in-title in 1902 was not the title of Sarobar but an illusory title, the contention being that Sarobar's interest had been extinguished by the decision of the Privy Council in the appeal in Gadadhar's case. The order of His Majesty in Council does not expressly reverse the decision of the High Court in the case instituted by Sarobar; but it is contended by the learned advocate for the appellants in this Court that the decision of the High Court in that case was reversed by necessary implication.

5. In *Jogesh Chunder Dutt v. Kali Churn Dutt* (1877) 3 Cal. 30 Garth C.J. pointed out the danger which follows from holding that a decree in one suit is impliedly reversed by a decision in another suit. The Chief Justice's judgment was a dissenting judgment agreed to by Jackson J. in a Bench of five Judges, and was approved of recently by the Privy Council in *Bommadevara Naganna Naidu v. Venkatapayya* A.I.R (1923) P.C. 167. That was a case in which a landlord had sued his tenants for the acceptance of pattas at certain rates for wet lands. The suits were dismissed by the Eevenue Court and by the District Judge on appeal. The High Court in second appeal reversed the decision holding that the pattas tendered by the zamindar were proper. This decision was reversed by the Privy Council six years later on the ground that the appeals to the High Court had been concluded by findings of fact. Between the date of the decree of the High Court and the date of the order in Council, the zamindar had recovered rent decrees in accordance with the decision of the High Court.

6. The tenants, after the order in Council in their favour, sued to recover the amounts by which the rents paid by them after the High Court decree exceeded the amounts for which they had been liable by the Order in Council. It was held that the decision of the Privy Council had not superseded the decrees under which the rent had been paid and the tenants were not entitled to recover. That decision was sought to be distinguished in the present case by reason of the fact that Sarobar was a pro forma respondent in the appeal which was preferred in the case instituted by Gadadhar.

7. It must be remembered however that in the suit which had been instituted by Sarobar himself, the decree of the High Court had become final. He was not

therefore interested in the appeal in Gadadhar's case in resisting the claim that was made by the appellants to His Majesty in Council, and there is nothing in the Order in Council from which it can be inferred that it was intended by their Lordships of the Privy Council to interfere with the decision of the High Court in Sarobar's case. I would therefore hold that the decision of the Privy Council in Gadadhar's case did not have the effect of extinguishing the right which had been found by the High Court to exist in Sarobar.

8. It was next contended by the learned advocate for the appellants that the entire tenure having been settled with them in 1879, they were patnidars and that the interest, if any, acquired by the plaintiffs by their purchase in 1902 was an interest subordinate to the appellants. This case was not made in either of the Courts below. In the Record of Rights the defendants (appellants) have been recorded only with respect to two-thirds of the patni interest. Whether the entry in the Record of Rights be correct or not, cannot be opened in this second appeal.

9. The entry must be presumed to be correct in the absence of evidence showing it to be wrong. From the known facts of the present case, it appears that the parties themselves have always acted on the assumption that the entry is correct; its correctness cannot now be impugned. The result therefore is that the appeal must be dismissed with costs.

Harries C.J.

I agree.