

(1936) 04 PAT CK 0016

In the Patna High Court

Dinanath Mahatha and Others

APPELLANT

Vs

Jyoti Prasad Singh Deo Bahadur

RESPONDENT

Date of Decision : 07-04-1936

Acts Referred:

Citation : AIR 1936 Patna 400

Hon'ble Judges : Mohamad Noor, J;Macpherson, J

Bench : Full Bench

Judgement

Macpherson, J.—The Zamindar of Pachet brought the suit out of which this appeal has arisen for a declaration that mauza Tupra held by defendants as "jagirdar" under him is held at an enhanceable rent and that the entry to the opposite effect in the Record of Rights is not correct. The defence was that the entry is correct and Tupra is a Jagir village held at a quit rent and there has been no variation of the existing rent of Rs. 323-3-4 gandas since the time of the Permanent Settlement. The first Court dismissed the suit holding that the plaintiff failed to rebut the presumption attaching to the Record of Rights. The learned District Judge in appeal reversed the decision and, decreed the suit. In second appeal his finding of fact is assailed as being vitiated by error of law. He arrived at his finding in favour of the plaintiff's claim on two sets of evidence. Accepting the sarsikan paper of 1197 (1790), which shows the rent at Rupees 127-11-0 sikka, and also the quinquennial fehris of 1202 (1795) which shows the rent at Rs. 209-12-0, both thus varying greatly from the entry in the Record of Rights, he held that the statements in these documents were valuable and proved beyond doubt that the rental had varied from time to time. He, then proceeded to consider certain other evidence in particular Ex. 3, a rent decree of 1846, against Dullam (Dulam) Singh, Ex. 6 a rent decree of 1871 against Lal Singh and Ex. A filed by the defendants which shows that in 1890 Pardul Singh, whose rights the defendants have purchased at auction, established his right to the whole tenure by virtue of the rule of primogeniture. He came to the conclusion that the decree, Exs. 3 and 6, also rebutted the presumption of the correctness of the entry in the Record of Rights as showing the rental to be

variable and not fixed.

2. It is clear that either of these findings would be sufficient. Both have been attacked by Mr. R.S. Chattarji, the second finding successfully in my opinion. It appears that in both the rent suits the defence was that the rent was Rupees 127-11-0. In the first place, this defence was negatived and a full decree at the rate claimed was passed. In the second place, the suits were not brought against Pardul Singh or any of his ancestors or real predecessors in interest. The persons sued had no title to the jagir and they or their descendants and other agnates were the defendants in the suit in which the judgment is Ex. A in which Pardul Singh established his sole right to the jagir by right of primogeniture. In fact Dullan (Dullam) Singh, the defendant in the suit of 1846, was the father of Bhupnath Singh, defendant 4 in the suit of 1892, and Lal Singh, the defendant in the suit of 1871, was father's brother of Pardul Singh and defendant 1 in the suit of 1892. Any admission or defence made by Dullan or by Lal Singh would not be binding on the owner or the defendants who purchased from him. In any case it is clear from Ex. 3 and Ex. 6 that the Courts in both cases found that the allegation that the rent was Rs. 127-11-0 was not true. Accordingly if the plaintiff-appellant is to succeed, it is upon the first finding that the rent had varied from time to time which finding depended upon the sarsikan paper and the quinquennial fehris of 1795.

3. It has been argued that the former of these was prior to the Permanent Settlement of 1793. But as it was very shortly before that date, the fact would not prevent it from being evidence and though it might be of very little value if it stood alone, it may be of enhanced value in combination with the quinquennial fehris of 1795. It might well be held by a Court of fact to be strongly corroborative of the latter, especially in view of the great difference from Rs. 323-3-4 decreed in 1846 which would have been an improbably high rent in 1793. It cannot be said, therefore, that the lower Court had not before it evidence upon which it could legally hold that the fact was that the rent of the jagir had been lower after 1793 than it was in 1846 and onwards. Upon this view the appeal fails and is dismissed with costs.

Mohamad Noor, J.

4. I agree.