
(1929) 02 PAT CK 0024
In the Patna High Court

Fuleshwar Singh and Others

APPELLANT

Vs

Ambica Prasad Singh and Others

RESPONDENT

Date of Decision : 13-02-1929

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1929 Patna 220 : 119 Ind. Cas. 545

Hon'ble Judges : Das, J;Adami, J

Bench : Division Bench

Judgement

Adami, J.—This appeal arises out of a suit in which the plaintiff sought for a declaration that the plots of land in villages Khas Kota, Purnadih, and Sitadih, mentioned in the schedules to his plaint are his raiyati lands, and that the entries in the Record-of-Rights showing him to be a tenure holder in respect of those lands are incorrect. He also sought to recover khas possession of certain plots detailed in Schdule 8 of his plaint from which he alleged he had been dispossessed under an order passed in proceedings u/s 145, Criminal Procedure Code. He claimed mesne profits in respect of these latter lands from defendants Nos. 6, 67, 77, 78,79 and 87.

2. The three villages above mentioned are khas mahal, belonging to the Government. It appears that previous to 1895 the villages were held under a thikadari settlement by the plaintiff's ancestors, but in that year it was determined by Government to substitute for the thikadari settlement, a settlement direct with the cultivators, a raiyatwari settlement. Consequently Mr. Sunder was deputed to draw up a list of all the lands and make a record of his settlement. Under the thikadari settlement the lands mentioned in Schedules 1, 2 and 3 had been held by the plaintiff and his ancestors as bakasht, though it seems that they were left out by the thikadar to cultivators. In the course of his settlement Mr. Sunder recorded these lands as the raiyati occupancy holdings of the late thikadar, and entered the persons who were actually cultivating the lands and paying rent to the thikadar, as shikmi or under-raiyats. Fresh settlement

proceedings were begun in about 1917 and the Record-of-Rights of all the lands in the three villages except of the gairmazrua lands, was finally published on 17th January, 1919. The record of the gairmazrua lands was published on 18th September, 1919. In the Record-of-Rights finally published on 17th January, 1919, the plaintiff has been entered as tenure holder in respect of the suit lands, while the defendants have been recorded as occupancy raiyats. It is the plaintiff's respondent's case that ever since Mr. Sunder's settlement he has been a raiyat in respect of the lands and that the defendants are mere under-tenants as shown in Mr. Sunder's settlement, and that in 1919, his servant Gobind Lal, who used to look after the cultivation of the lands, having died, certain of the defendants expressed a desire to take a settlement for seven years undertaking to give up the lands unconditionally at the end of that period. It was subsequently arranged that the period of the leases was to be five years only, and accordingly three kabuliyats were executed and registered by certain of the defendants or their fathers on 16th April, 1919, 17th June, 1919 and 8th August, 1919, respectively. It is the plaintiff's case that on the expiry of the five years, he obtained khas possession of the lands and that after that, finding it difficult to make arrangements for the proper cultivation of the lands, he arranged with certain of the defendants that they should enter into partnership with him for the purpose of cultivation. Three registered deeds were executed by certain of the defendants in April, 1924, and thereafter those defendants cultivated the lands with him in partnership, but defendant No. 78 who had not joined in the partnership agreement, raised trouble resulting in proceedings u/s 145 and an order in favour of defendants Nos. 6, 67, 76, 77, 76 and 79 and the dispossession of the plaintiff. After that some of the defendants gave up their partnership. Then the present suit was instituted.

3. The contention of the contesting defendants has been that they are settled raiyats of the villages and hold occupancy rights in all the lands, and that they and their ancestors have been in cultivating possession for 40 years or more. They have contended further that the suit is barred by limitation.

4. The Subordinate Judge dismissed the suit as against the Secretary of State who had been joined as a party defendant being proprietor of the khas mahal villages, as no proper notice was proved to have been served on him. He found that the defendants are under-raiyats and that the kabuliyats of 1919, in which they admitted this, were genuine, also that the plaintiff had proved that he was recorded as an occupancy raiyat by Mr. Sunder.

5. On the point of limitation the learned Subordinate Judge found that as there was a final publication of the Record-of-Rights as to gairmazrua lands in the villages on 18th September, 1919, the suit, which was instituted on 14th April, 1926, was within time. He accordingly decreed the plaintiff's suit.

6. The ground of limitation has been pressed before us on appeal and it must succeed. The final publication of the Record-of-Rights covering all the lands in the three villages including the suit lands, but excluding gairmazrua lands was finally

published on 17th January, 1919 and the suit having been instituted more than six years after that date is barred by limitation. The fact that in September, 1919, there was a separate and entirely distinct publication of a record relating only to gairmazrui lands will not save limitation so far as the suit lands are concerned. Apart from this, however, there are other grounds on which the appellants should be successful.

7. The ancestor of the present respondent with whom the thikadari settlement was made by Government, was the owner of a large estate, and it was for that reason probably that the settlement was made with him previous to 1895. He would have the establishment ready for the collection of the rents of the tenants of the khas mahal villages which were not part of his estate. It is certain that, at the time of Mr. Sunder's settlement though the lands in suit may have been nominally bakasht to the thikadar, he was not cultivating them himself or through his hired labour, for we find that these lands were held by tenants under him. This must be so because Mr. Sunder recorded the lands as being Cultivated by shikmi raiyats. It is evident that the rents for these lands went to him as part of the return for his services as Collector of rents in the khas mahal lands. It is clear too, that Mr. Sunder recorded him as an occupancy raiyat when making a raiyatwari settlement because he found that the lands were known as bakasht of the thikadar and would nominally be cultivated as such by the thikadar himself or by hired servants.

8. It is quite impossible to believe that the plaintiff's predecessor when he took the settlement from Mr. Sunder ever had the intention of cultivating large areas in the three khas mahal villages himself or through hired labour. He had a large estate himself and would never think of himself cultivating or getting cultivated plots in these outside villages. I have no doubt at all that the intention was to acquire a right to hold the land for the purposes of collecting rents, or of bringing it under cultivation by establishing tenants on it, that is to say, his intention was to be a tenure-holder as defined in Section 5, Chota Nagpur Tenancy Act.

9. In determining the present case and in deciding whether the plaintiff is a tenure-holder as shown in the Record-of-Rights or an occupancy raiyat as he asserts relying on Mr. Sunder's settlement, we have to see what was the intention at the inception of the tenancy and it is the intention of the person acquiring the right and not the intention of the landlord who creates it, that has to be looked to. Section 5, defines a "tenure-holder" as "primarily a person who has acquired from the proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents etc."

10. Section 6 again defines "raiya" as "primarily a person who has acquired a right to hold land for the purpose of cultivating it etc."

11. In the present case we have to look not to the purpose of Mr. Sunder, but to that of the plaintiff's predecessor. In some textbooks the expression "the purpose for which the tenancy was created" has been used but this is wrong and

misleading; the expression "the purpose for which the tenancy was acquired" is correct.

12. The subsequent conduct of the plaintiff and his predecessor shows clearly what the intention was when settlement was taken from Mr. Sunder. They have been tenants on the lands continually from 1895 who have been cultivating them and paying rent to the plaintiff. It is true that the defendants or their predecessors-in-interest executed the three kabuliyats in 1919, and that the plaintiff avers that he obtained khas possession on the expiry of their term but it has to be remembered that the kabuliyats were executed after the Record-of-Rights showing the defendants to be occupancy raiyats had been finally published. It is hard to believe that some pressure was not exerted to induce the defendants to execute the kabuliyats. Though the plaintiff states that he got khas possession, he at the same time confesses that he could not make proper arrangements for the cultivation of the lands and so resorted to the device of making some of the defendants his partners in cultivation. These so-called deeds of partnership are in reality nothing more than kabuliyats. The plaintiff, I am convinced, never cultivated the lands and never intended to. The fact is that the defendants and their predecessors were in cultivating possession at the time of Mr. Sunder's settlement and have continued in such possession.

13. u/s 74, Chota Nagpur Tenancy Act, where a tenant has been in occupation of a tenure or holding, and a lease is executed with a view to the continuation of such occupation he shall not be deemed to be admitted to occupation by that lease, notwithstanding that the lease may purport to admit him to occupation. On the evidence the kabuliyats or so-called deeds of partnership propounded by the plaintiff do not help to show that the defendants were admitted to occupation under them. As a matter of fact the kabuliyats Exs. 10, 10-A and 10-B relate to lands on which it is admitted that the plaintiff was cultivating and over which the defendants do not claim to have settlement from the time of Mr. Sunder's settlement.

14. In my opinion, the plaintiff failed to rebut the presumption of the correctness of the Record of Rights which shows the plaintiff to be a tenure-holder and, therefore, could not succeed in his suit, which was also time barred. It may be pointed out that in any case no decree could be passed against defendants Nos. 3, 41 and 67 inasmuch as they were dead at the time the decree was passed. I would allow the appeal with costs in both Courts. The decree of the lower Court must be set aside, and the suit be dismissed.

Das, J.

15. I agree.