
(1937) 02 PAT CK 0018
In the Patna High Court

Gurshai Mahton and Others

APPELLANT

Vs

Jugeshwari Prasad Singh and Others

RESPONDENT

Date of Decision : 16-02-1937

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1937 Patna 454 : 170 Ind. Cas. 475

Hon'ble Judges : Courtney-Terrell, C.J.;James, J

Bench : Division Bench

Judgement

Courtney-Terrell, C.J.—This is an appeal tinder the Letters Patent from a decision of a Single Judge of this Court. The suit out of which the appeal arises was one by the plaintiffs to eject the defendants from a house. The defendants first party are in occupation of the house and they had purchased the rights of the defendants second party who appear to have been in occupation of the house for some 40 years before the defendants first party appeared upon the scene. The defendants first party applied to the landlord, who is the plaintiff, for permission to complete the purchase with the defendants second party and the landlord there upon gave his consent after having received a salami of Rs. 25. The terms of his consent were put into writing and are as follows:

Order for the purchase of Dih land (land for residential use) to Shiboo Mahton and others of village Barh, paragana Ghayaspore, etc, etc., by Jugeshwari Prasad Singh, the malik and the harta of the family, resident of village Gonawan. As prayed for, permission is given to you to purchase a residential house from Sham Lal Modi, son of Saniohar Modi, You do purchase the said residential house quite willingly with my permission and pay Rs. 25 as salami for recognizing you and registering your name. Hence an order in writing is given for future reference. Dated Jaith 3, 1329 Fasli.

2. The plaintiff served upon the defendants notice to quit and then began this suit. The suit was begun before the amendment of the Transfer of Property Act which resulted in Section 53A, which is now in force, so that no question of part

performance arises. The only question "before us is whether by reason of the document, which I have set forth above, the plaintiff is estopped from suing to eject the defendants by reason of representation contained in the document. The defendants first party have since the document referred to, remained in possession and paid rent; and it is said, but there does not seem to be any clarity in the finding, that they have since then added to the pucca structure in existence before they came into possession. The learned Judge of this Court, I think, rightly held that the document itself did not create a permanent tenancy: but, in my opinion, he was wrong in holding that the document does not amount to a representation which would have" the effect of estopping the plaintiff from suing for ejectment. Having regard to the fact that the house was a residential one, having regard to the fact that the pucca structure was standing thereon and having regard to the fact that salami was taken, and that after that the defendants first party were induced by this document to enter into possession and to pay rent, the proper view is, to my mind, that the plaintiff is estopped from suing in ejectment. It is not necessary for the purpose of this decision to go into the question of the particular nature of the tenancy now enjoyed by the defendants first party: it is enough to say that the plaintiffs' suit must fail. I would, therefore, allow the appeal under the Letters Patent. The defendants first party are entitled to their costs throughout.

James, J.

3. I agree.