

(1935) 04 PAT CK 0008
In the Patna High Court
Case No : Appeals Nos. 1099 to 1103 of 1932

Har Dayal Bhagat

APPELLANT

Vs

Nathuni Bhagwat

RESPONDENT

Date of Decision : 24-04-1935

Acts Referred:

Citation : (1935) 04 PAT CK 0008

Final Decision : Allowed

Judgement

Mohammad Noor, J.—The points for determination in all these five analogous second appeals are the same. The plaintiffs of the respective suits, who are appellants sued for recovery of possession of their alleged occupancy lands from which according to them they were dispossessed by the defendants in consequence of an order under S. 145, Criminal P.C., passed on 17th March 1927. The defendants claimed to have taken settlement of these lands from the landlords. The suits were instituted on 18th March 1929, within two years of the order, the 17th March of that year being Sunday. The lands involved in all the suits, which are situated in village Rampur Shamchand Shaistabad, were submerged under water and remained so for sometime and then came out about the year 1920. The extent of this submersion was in controversy between the parties. According to the plaintiffs the lands were under water for only about two years and that they continued in possession thereof till they were dispossessed by the defendants who took settlement of these lands from the landlords. According to the defendants the lands were completely diluviated and re-appeared in about 1920 and thereafter the plaintiffs did not care to cultivate them, and the landlords took possession thereof and settled them with these defendants. The question of the extent of submersion, which has been dealt with in some detail by the learned Munsif and also by the learned District Judge, does not seem to me of any importance.

2. It is admitted that the lands were under water and the question for how long they remained so is not very material for the purposes of the suits. We get it that

they re-appeared in 1920. The learned Munsif was unable to find when the plaintiffs were actually dispossessed and as the suits were instituted within 12 years of the re-appearance of the lands has held the suits to be in time. He refused to apply special limitation provided by Art. 3, Sch. 3, Ben. Ten. Act, as according to him the dispossession was not by landlords. He found that the plots in suits were the occupancy lands of the plaintiffs and therefore decreed the suits. On appeal the learned District Judge has reversed this decision. While dealing with the question whether the identity of the lands has been established, he seems to be somewhat doubtful, but has left the question observing that in view of his decision on another point (limitation) it was not of much importance. I do not think there is any question about the identity of the lands involved in the suits. The plaintiffs have sued for specific plots giving their survey numbers. These very plots are claimed by the defendants on the basis of settlement to them by the landlords. No doubt, the first patta of 1920 did not specify the plot numbers, but there was a supplementary patta specifying the plot numbers which are the plots in suits, and these plots, according to the record-of-rights were the occupancy lands of the plaintiffs. In one of the suits (No. 58 of 1929), the plaintiffs claimed the lands as having been purchased by them from the recorded raiyat. There was no question about the genuineness and validity of this sale. Therefore the question of identity of the lands did not arise in these suits at all and there is no necessity to remand the cases for further finding on this point. Now, the learned District Judge has found as a fact that immediately after the lands came out of water the landlords took possession of them and that since then the plaintiffs were not in possession. On these findings he applied special limitation and as the suits were instituted more than two years after the admitted re-appearance of the lands he dismissed the suits. The plaintiffs have preferred these second appeals.

3. Two points have been urged before me by Mr. Rai Tribhuan Nath Sahay, who appears on behalf of the appellants. One is that in order to attract the special rule of limitation of the Bengal Tenancy Act, the dispossession must be by the landlord or his agent. The dispossession by a person who claims to have taken settlement of the land from the landlord is not dispossession by the landlord. The second is that in order that the special limitation be applied there must be actual dispossession and not discontinuance of possession of the raiyat, and as in this case the finding is not that there was any act of dispossession by the landlords, but that on the re-appearance of the lands the plaintiffs discontinued cultivating them and then they were taken possession of by the landlords the special limitation does not apply.

4. As to the first point I must say at once that there is no force in it. In my opinion, a person who goes on the land armed with a settlement from the landlord and turns out the raiyat and dispossesses him such dispossession is obviously by the landlord. This seems to be the view taken in *Bheka Singh v. Nakchhed*, (1897) 24 Cal 40 and *Rakhit Mahanta v. Puddo*, (1905) 9 C W N 54 and in a very recent decision in *Abdul v. Hamed*, 1933 Cal 898 = 60 Cal 1082,

and I respectfully agree with them I do not think that in order to apply the special limitation it is necessary that dispossession of the raiyat must be by the landlord himself or by his hired servant. If the landlord authorizes a third person by making settlement of the land with him to dispossess a raiyat and that person armed with that settlement dispossesses him the dispossession is by the landlord. The second contention of the learned advocate however must prevail. The finding of the learned District Judge is clear that when the lands came out of water the landlords divided the lands among themselves and then made settlement [with the defendants. Now, a division of land by the landlords among themselves by itself cannot and does not constitute dispossession of the raiyats. Lands are divided among landlords without disturbing the possession of the raiyats in any way. The learned District Judge however seems to find that the conduct of the landlords brought about the dispossession of the plaintiffs. The conduct referred to is the act of Settlement by the landlords. There is no allegation that the plaintiffs were actually dispossessed by the defendants. The allegation is that they themselves gave up cultivating the lands. The distinction between dispossession and discontinuance of possession was pointed out by Mcokerjee, Ag. C. J., in *Panchoo v. Jajneswar*, 1920 Cal 348 = 58 I C 844. His Lordship observed as follows:

As was pointed out by this Court in *Brojendra v. Bharat*, 1916 Cal 761 = 31 I C 242 the term "dispossession" implies the coming in of a person and the driving out of another from possession, while "discontinuance" implies the going out of the person in possession and his being followed into possession by another.

5. The question seems to have been considered in a some what similar case by a Division Bench of this Court in *Jurawan Singh v. Ramsarekh Singh*, 1933 Pat 224 = 149 I C 561 = 12 Pat 261, where also the lands involved had become diluviated and had come out of the river and then were taken possession of by the landlord. Kulwant Sahay, J., while referring to this aspect of the case observed as follows:

Article 3, Sch. 3, Ben. Ten. Act, applies only to cases of actual dispossession by the landlord. If the possession of the tenants ceased on account of the land being submerged under water, and if after reappearance of the land there was no actual taking of possession by the raiyats and no dispossession by the landlords, Art. 3, Sch. 3, Ben. Ten. Act, would not apply. In order that there should be dispossession by the landlord there should first have been possession of the raiyats; but where the plaintiff had not taken possession after reappearance, the fact that the defendant succeeded in taking possession would not amount to a dispossession within the meaning of Art. 3, Sch. 3, Ben. Ten. Act.

6. His Lordship referred with approval to a decision of the Calcutta High Court in *Rajani Kanta v. Panchanon*, 1926 Cal 350 where it was held that in order that Art. 3, Sch. 3, Ben. Ten. Act, may apply to, a suit for recovery of raiyati land, there must be actual dispossession of the raiyat by the landlord. The operation of the article cannot be extended to the cases of so-called constructive

dispossession where the landlord has never allowed the tenant to take possession of the land. It is not the case of the defendants that the plaintiffs obtained possession of the lands and then they were dispossessed. Their case is that the plaintiff's were never in possession of the lands after their reappearance. No doubt, it was the plaintiff's case that they were in possession and were dispossessed in consequence of the order under S. 145. Criminal P.C., but this was negated by the lower "appellate Court. If the plaintiffs' case he accepted, the suits are obviously within time even under the special law of limitation; but according to the finding of the learned District Judge the possession of the plaintiffs was discontinued on account of the lands having been submerged under water and then the landlords took possession of them after their re-appearance. In such a case the special law of limitation will not apply. This view seems to be supported by reference to S. 87, Ben. Ten. Act, which deals with abandonment of holdings where, apart from Art. 3, Sch. 3 a special period of limitation of two years is provided for a suit for recovery of possession by a raiyat of an abandoned holding when the landlord enters it after observing the formalities prescribed therein. It is clear that if he enters the holdings without performing the formality the special limitation will not apply. If the legislature intended that there should be the same period of limitation for suits by a raiyat to recover possession of land both when he is dispossessed by the landlord and when the landlord enters upon the land treating it as abandoned without observing the formality there was no necessity of restricting the special period of limitation only in those cases in which the entry is in accordance with the provision of the section.

7. The result is that all the appeals are allowed. The decree of the lower appellate Court is reversed and that of the Munsif restored. The appellants are entitled to their costs both in this Court and in the Court of appeal below. It is to be noted that there is no appearance in Second Appeals Nos. 1100 to 1103, I am asked to certify that this is a fit case for a Letters Patent appeal. I decline to do so as the case seems to be clear.