
(1933) 10 PAT CK 0060
In the Patna High Court

Hira Lal Singh and Others

APPELLANT

Vs

Babu Rinkauri Singh and Others

RESPONDENT

Date of Decision : 24-10-1933

Acts Referred:

Bengal Tenancy Act, 1885 — Section 159, 68
Transfer of Property Act, 1882 — Section 117

Citation : AIR 1934 Patna 75

Hon'ble Judges : Saunders, J; Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—This is an appeal by the principal defendants in a suit for rent of two sets of mauzas held by them under two leases executed by the plaintiff's predecessors-in-title. The lease in respect of one set of four Mauzas, Ghoghraha, Suraya, Ratnagar and Sagrampur, expired with the year 1334 Fasli, and for the other set which comprised two Mauzas, Chapiatola Phenahra and Dubauli, in the following year. The rents sued for were confined to 1333 and 1334 in respect of the first set of mauzas but covered the year 1335 in respect of the second set. Various pleas were taken in defence, but they were mostly overruled both by the trial Court, and the suit was decreed in part. The defendants appealed to the District Judge, who upheld the decree and dismissed the appeal.

2. Before us three points have been raised by Mr. Manohar Lal on behalf of the appellants. The first is that the finding of the lower appellate Court as regards the plea of payment set up by the defendants is not in accordance with law in that it merely endorses the view of the trial Court without a fresh consideration of the evidence and without paying any attention to the fact that in the circumstances of the case a presumption should have been drawn from the failure of the plaintiff to go into the witness box that certain disputed receipts put forward by the defendants were signed by him. It does not seem to me that there is any force in this contention.

3. Though it is stated in one of the grounds in the memorandum of appeal that

the plaintiff failed to appear in spite of summons were served on him by the appellants, no attempt has been made before us to show that that was so in fact. Nor does the point seem to have been actually urged in the lower appellate Court. As regards the disputed payments, the defendants put forward nine rent receipts in all. Three of these were admitted on behalf of the plaintiff and given credit for in the account attached to the plaint. As regards Ex. B-2, defendant 1 had to admit that that paper is not a receipt but only a "tankha" or demand letter; and the trial Court, for reasons given, declined to accept his story that the plaintiff had not given any receipt for the money because he was in a hurry.

4. This is a simple question of fact, and the view of the trial Court was endorsed by the lower appellate Court as the final Court of fact. Exs. B-4 and B-5 refer to oil worth annas eight each, and there was a sworn denial on the side of the plaintiff as regards the receipt of this oil. As regards the remaining three receipts, the trial Court dealt with the evidence adduced on behalf of the defendants and criticized the failure of defendant 1, in spite of his admission that the amounts are shown in his bahi, to produce that book and his failure also to produce two sets of two witnesses each who are said to have witnessed the payments. It is true that the case of the defence seems to have been that the receipts were signed by the plaintiff and written by certain persons, out of whom one Rajindra Singh only was called for plaintiff. Rajindra Singh, who is said to be the karpardaz of the plaintiff, had according to the defence written most of the receipts.

5. He denied having written the papers attributed to him and also denied to signature of the plaintiff on any of the receipts. Mr. Manohar Lal contended that the denial did not cover all the papers, and that in respect of some of these papers, the defence evidence was the only sworn evidence in the case, which should, therefore, and especially in view of the failure of the plaintiff to appear in the witness-box, have been accepted. This might have been a fair argument to advance before the final Court of fact; but if it was advanced, the District Judge must have rejected it. It does not appear correct to say that Rajindra's denial of the plaintiff's signature did not extend to all the receipts, and there is no error of law in the finding of the District Judge in appeal that

the learned Subordinate Judge has discussed in detail the evidence regarding these receipts and I need only say that I agree with him that the defendants failed to prove that the receipts challenged by the plaintiff were genuine or that they had made the payments as alleged.

6. It was also contended by Mr. Manohar Lal that time should have been given to the defendants to examine a Collectorate Tahsildar named Jamuna Prasad; but it appears perfectly clear from the record, as has been pointed out in detail by the learned District Judge, that the defence did not seriously press the application to examine that witness. The concurrent finding of the lower Courts on the question of payment cannot therefore be disturbed in second appeal. The next point taken by Mr. Manohar Lal is that the defendants are entitled to a suspension of the

entire rent of the second set of mauzas for the year 1335 Fasli because the plaintiff leased these mauzas also from that year onwards to a thikadar called Ram Sewak, who has been found by the trial Court to have realised Rs. 2-8-0 as rent from a tenant called Rekha Raut from a village of this set.

7. Mr. Manohar Lal has pointed out that in para. 6 of the plaint, where this lease is mentioned, it is stated that the thikadar Ram Sewak was in possession and occupation from 1335. This statement however refers not to the two mauzas covered by the longer lease but to the four mauzas of the first set, and is therefore of no assistance to the appellants in this connexion. The plea of a total suspension of rent on the ground of a partial eviction was not raised below at all; what the defendants said in para. 7 of their written statement was that on account of the lease executed by the plaintiff in favour of Ram Sewak Singh, the latter was in possession and occupation from the beginning of the year 1335 Fasli and that therefore the plaintiffs was not entitled to claim rent for that year.

8. This was a plea not of partial eviction and consequent suspension of the entire rent, but (as will be seen presently) the very different plea of complete dispossession. Among the issues framed for the trial, there is none suggesting a claim by the defendants to suspension of the entire rent on the ground of partial eviction.

The Subordinate Judge's discussion of issue 4, to what relief, if any, is the plaintiff entitled, also shows that what was urged before him was, not that the defendants were entitled to a suspension of rent on the ground of partial eviction but that they were not in possession of the two mauzas in 1335 at all.

9. His finding on this point is that Ram Sewak was trying to take possession but was not allowed to do so by the defendants who remained in possession and went on realising rents from the tenants. In the appeal to the District Judge also, as urged, the point appears to have been presented not on the footing now attempted but on the same footing as in the trial Court. The learned District Judge has dealt with the point as presented to him, and his conclusion is:

Now whether or not Ram Sewak did collect rent from a few tenants in the year 1335 on the basis of his patta, I think it is quite clear that the defendant did not give up possession in that year and they continued to collect rent. They were therefore liable to the plaintiff for the rent of this year.

10. He does not definitely go beyond the finding of fact below that Ram Sewak collected rent from one tenant only, viz., Rekha Raut. Mr. Manohar Lal contends that even on this finding the defendants are entitled to a suspension of the entire rent; and in support of this contention he cites *Abhoya Charan Sen and Others Vs. Hem Chandra Pal and Others*, , where Mitter, J., on a review of the case law, held (as the head note puts it) that

in every case where there is a lump rental and the tenant has been dispossessed by his landlord from a portion of the demised premises, however small that

portion may be, the rule of total suspension of rent must be applied;

and that by their observations in AIR 1925 97 (Privy Council) , their Lordships of the Judicial Committee had really laid down this rule.

11. But the point on which Katyani Debi appealed to the Privy Council was the one on which Uday Kumar Das had succeeded for the first time in his appeal under the Letters Patent [Uday Kumar Das v. Katyani Debi AIR 1922 Cal 87], viz., whether, as the purchaser of a perpetual tenancy sold for arrears of rent u/s 159, Bengal Tenancy Act, she was entitled to an abatement of rent in respect of part of the land [some 1350 bighas in Daskati, see the judgment of Cuming, J., in Katyani Debi v. Uday Kumar AIR 1922 Cal 348 at p. 274 of 49 Cal] which, at the date of her purchase, was in the possession of a trespasser (her own husband), whom she had allowed to continue in possession and thus acquire an absolute title against herself.

12. Their Lordships negatived the right to abatement in such circumstances and did not deal with the effect of a "mala fide" or deliberate eviction of the tenant by the landlord, the question that arose in Abhoya Charan Sen and Others Vs. Hem Chandra Pal and Others, . It is true that they also negatived a contention, which was faintly advanced before them, that she was entitled to suspend payment of rent because the landlord had not put her in possession of a plot of 61 bighas which was embraced in the lease of 1878 but to which her husband had established a paramount title dating from 1875. It was in negating this contention that their Lordships pointed out that the doctrine of suspension of payment of rent, which has been applied where the rent was a lump rent for the whole land leased treated as an indivisible subject, has no application to a case where the stipulated rent is so much per acre or bigha.

13. It is true that under the English law a landlord is no more entitled to apportionment of rent when he is unable to put his tenant in possession of part of the demised premises on account of the rightful possession of a third party than when he unlawfully evicts the tenant. But the applicability in Indian conditions of the English rule of suspension of rents in its stringent form was doubted in not a few reported decisions, such as Annada Prosad v. Mathura Nath (1909) 2 IC 123; Rai Charan Mazumdar v. Administrator-General of Bengal (1909) 36 Cal 856; Rai Moni Dassi v. Mathura Mohan Das (1912) 39 Cal 1016; Saroda Prosad v. Monmatha Nath (1915) 28 IC 372 and Narendra Chandra v. Manindra Chandra AIR 1922 Cal 153. Even in Katyani's case AIR 1922 Cal 87, the patnidar had been dispossessed in 1880 of plot A under a darpatni granted by the zamindar, but Woodroffe and Cuming, JJ., concurred in refusing suspension of rent for such dispossession in the circumstances of the case, as the landlord had acted bona fide: see p. 271 of (49 Cal) in Katyani Debi v. Uday Kumar AIR 1922 Cal 348, and Katyani Debi carried her grievance on this point no further.

14. Since the decision of the Judicial Committee in Katyani's case AIR 1922 Cal

348 also, the English doctrine of suspension of rent has been observed upon and held inapplicable in the circumstances of several cases such as *Bisweswar Sarkar v. Kalicharan* AIR 1926 Cal 908; *Tarap Sheikh v. Kunja Behari* AIR 1926 Cal 1226 and *Manik Chandra v. Hari Mistri* AIR 1926 Cal 1148, before we come to the detailed examination of the rule and its basis by B.B. Ghose. J., in *Susil Kumar Biswas and Others Vs. Rajani Kanta Chakrabutty and Others*, . The English doctrine has been rested from time to time on various grounds, which were noticed in detail by Mookerjee, J., in *Rai Charan Mazumdar's* case (1909) 36 Cal 856. Some of these grounds are applicable even to cases where the stipulated rent is so much per acre or bigha, and that is how the doctrine was applied in *Hurro Kumari v. Purna Chandra* (1901) 28 Cal 188.

15. And it is to be noticed that even in *Dhunput Singh v. Mahomed Kazim Ispahani* (1897) 24 Cal 296, where the doctrine was laid down on a reference to English and Indian decisions, their Lordships allowed apportionment of rent in respect of those mauzas in which the landlord had not interfered with the patnidar's possession though they recognized that on the terms of the patni grant the whole patni rent was reserved upon every part comprised in the patni, and that in *Hurro Kumari's* case (1901) 28 Cal 188 it was pointed out that where there is a bigha rate, it cannot be reasonably said that each bigha is separately assessed and separately chargeable with rent.

16. Nor has suspension of rent been allowed in every case of partial eviction or failure to deliver possession where there was a lump rental: See for example *Sarada Prosad v. Monmatha Nath* (1915) 28 IC 372, *Narendra Ghandra v. Manindra Chandra* AIR 1922 Cal 153 and *Bisweswar v. Kalicharan* AIR 1926 Cal 908 to say nothing of the fact that it was not on the ground that there was a bigha rate that suspension was disallowed in respect of dispossession from plot A in *Katyani's* case.

17. The fact is that the Courts were disinclined to punish the landlord with suspension of the entire rent unless he had deliberately committed the wrong of dispossessing his tenant from part of the land leased; and several equities were found entitling the landlord to an apportionment of rent. The eviction that is necessary for the doctrine of suspension of rent to apply would seem even in England to be a matter of intention, for Jervis, C.J., said in the frequently cited case of *Upton v. Townsend* 139 ER 976 (at p. 991):

Getting rid thus of the old notion of eviction, I think it may now be taken to mean this, not a mere trespass and nothing more, but something of a grave and permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the demised premises.

18. It is on this account that in a number of the reported decisions already cited, reference was made to the question whether or not the lessor had acted "mala fide," so as to incur the penalty of suspension of the entire rent for a partial eviction. Now this is not a question that arises where the issue is merely whether

or not the tenant was in possession of the land leased. As the defence of suspension of rent for a partial eviction was not agitated below, there is no finding that in giving the lease to Ram Sewak the plaintiff acted with the intention of depriving the appellants of the enjoyment of any mauza of the second set. The observation of the learned District Judge on which it has been urged, that suspension of rent should be allowed under the ruling from Abhoya Charan Sen and Others Vs. Hem Chandra Pal and Others, , only suggests that the interference actually caused by the plaintiff's lease of 1335 Fasli, such as it was, was anything, but substantial; and there is force in Mr. Mullick's contention that the interference amounted to no more than the realization, possibly inadvertently, of Rs. 2-8-0, from one tenant who may even have paid voluntarily.

19. It was not from the plaintiff himself that the appellants had obtained their leases, and the lower Courts have concurrently found that the appellants did not allow the new lessee to come into possession, but remained in possession and continued to collect rent themselves, and even sued Rekha Raut for the rent of 1335 Fasli, but got the suit dismissed, shortly before they filed their written statement in the present suit, apparently (as the learned Subordinate Judge has said)

to create evidence of defendants not being in possession in that year of those two villages.

20. Whether the doctrine of suspension of rent is to apply or not clearly depends on the circumstances of each case in the sense that mere dispossession of the tenant is not enough, but that it must be found that; the landlord was a party to it and that too deliberately. Abhoya Charan Sen and Others Vs. Hem Chandra Pal and Others, is clearly distinguishable on the facts. The appellants are not, in my opinion, entitled to succeed on the point raised by Mr. Manohar Lal at this stage as the fact or facts found by the lower Courts are not by themselves sufficient to entitle them to have the doctrine of suspension of rent applied in their favour.

The third and last point urged by Mr. Manohar Lal refers to the award of damages for the defendants' failure to pay the rent due. It is contended that as the leases of the defendants provide for interest only at one per cent per month, and that as they are not leases for agricultural purposes within the meaning of Section 117, T.P. Act, the plaintiffs are not entitled to the damages at 25 per cent awarded u/s 68, Ben. Ten. Act.

21. The appellants have not had the leases printed in the paper book, nor have they placed them before us. It is therefore impossible to say how far they are within the ruling in AIR 1930 18 (Privy Council) , on which we are asked to hold that the Bengal Tenancy Act does not apply to them. Such leases would ordinarily be within the purview of the Bengal Tenancy Act for the reasons given in this. Court by Dawson Miller, C.J., in W.W. Broucke Vs. Sri Punch Rani Chhatar Kumar Devi, . In the Bengal Tenancy Act applies, we know from Clause (h), Section 178(3) that contracts between parties to suits under the Act will not

exclude the operation of Section 67 and that therefore notwithstanding the provision of a smaller rate of interest in the leases, the plaintiff will be entitled to claim interest at 12½ per cent per annum. Section 68 of the Act provides that:

if, In any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has without reasonable or probable cause neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding 25 percent on the amount of rent decreed, as it thinks fit.

22. with the proviso that no interest is to be decreed if damages are awarded. This is the provision of law under which the lower Courts have acted. The section clearly empowers the Court to award damages in suitable cases, coming within the Act as the present case must be taken to have done. Mr. Manohar Lal has also urged that no damages should have been awarded in this case because of the admitted fact that the plaintiff gave a lease of the mauzas to Ram Sewak Singh with effect from 1335. But the actual results of that lease have been investigated and pronounced upon by the lower Courts.

23. The learned Subordinate Judge further gave reasons for awarding damages instead of interest by referring to two previous judgments which show that on those occasions also the plaintiff was allowed damages. It is, therefore, impossible to interfere with the order awarding damages, whether as a matter of law or as a matter of discretion, except in One small respect. There does not seem to be any reason--Mr. Mullick has not contended that there is any--why in the circumstances of this case the appellants should not have relief to the extent of Rs. 2-8-0, the amount that was admittedly recovered by the plaintiff's new thikadar Ram Sewak from Rekha Raut for the year 1335 and that has not in fact reached the appellants.

24. The decree of the lower Court therefore requires to be modified by reducing the rent by this small amount of Rs. 2-8-0.

The appeal fails substantially, and I would, subject to the modification just indicated, dismiss it with costs to the plaintiff-respondent.

Saunders, J.

25. I agree.