

(1944) 08 PAT CK 0011
In the Patna High Court

Jadoo Potedar and Others

APPELLANT

Vs

Srimati Champabati Sahiba

RESPONDENT

Date of Decision : 23-08-1944

Acts Referred:

Bihar Tenancy Act, 1885 — Section 60
Land Registration Act, 1876 — Section 79

Citation : AIR 1945 Patna 157

Hon'ble Judges : Fazl Ali, C.J.;Agarwala, J

Bench : Full Bench

Judgement

Fazl Ali, C.J.—These appeals arise out of a number of rent suits which have been decreed throughout. The tenant-defendants have preferred these appeals under the Letters Patent against the decision of a learned Single Judge of this Court in second appeals arising out of the rent suits. The suits were brought to recover four annas kist of chait 1348 with respect to a number of holdings which are situated in two villages known as Adidpur and Anandpur. These villages admittedly belonged to the plaintiff's husband, Rao Bahadur Rudra Pratap Singh. On 27th January 1938, Rudra Pratap Singh executed a registered Sadhaua Pataua deed in respect of a number of villages, including the two villages with which we are concerned, in favour of one Khojendra Narain Jha for a period of three years. On 14th December 1938, he executed a registered deed of gift in favour of the plaintiff in respect of the two villages in question. As the term of the Sadhaua Pataua deed was to expire on 27th January 1941, Rudra Pratap Singh executed a second Sadhaua Pataua deed in favour of Khojendra Narain Jha on that very date, that is to say, on 27th January 1941, and it is said that the second deed was executed in pursuance of a condition in the first deed which provided that in case the entire money due under the first deed was not paid within the period of three years, that deed was to be renewed.

2. The plaintiff brought these suits for rent on the allegation that after the expiry of the term of the Sadhaua Pataua deed of 1938 in favour of Khojendra Narain Jha, she came into possession of the villages and was entitled to realise rents.

The tenant defendants on the other hand pleaded that they had paid rent for the kist in question to Khojendra Narain Jha and had obtained rent receipts. They also produced a number of rent receipts in support of their plea. The Munsif who tried the suits, as well as the learned Judge who heard the appeals from his judgment, went elaborately into the question of title, and held that Rudra Pratap Singh having given away the villages by a deed of gift to his wife was not competent to renew the Sadhaua Pataua document, and therefore Khojendra Narain Singh had acquired no title under the second deed, and the rents were due not to him but to the plaintiff. As regards the plea of payment, which was set up on behalf of the defendants, both the Courts expressed the opinion that even if the rents were paid to the Sadhaua Patuadar that would make no difference to the plaintiff's claim. It was urged on behalf of the defendants that the money which was due under the first Sadhaua Pataua deed had not been paid up, but the Munsif refused to go into the question and observed as follows:

It is said that the entire money could not be paid up and hence the deed of extension, Ex. B, was executed by the Rao Bahadur. It is needless for me to consider in these suits as to whether any money remained unpaid after the term had expired or the Rao Bahadur only executed this deed just to harass his wife as she contends before me.

3. Again with regard to the plea of actual payment the following passage, which I quote from the judgment of the learned District Judge, will be sufficient to illustrate the attitude of the first two Courts towards this question:

In the circumstances, I must agree with the learned Munsif in the finding that even if the rents have been paid to the Sadhaua Patuadar by the tenants under the receipts, these receipts will not constitute a valid or sufficient discharge for the rents due to the recorded proprietress, namely, the plaintiff.

4. Now it is common ground that Khojendra Narain Jha is still recorded as the mortgagee in possession in the Register D. The plaintiff also is recorded as proprietress having derived her interest under the deed of gift; but it is to be remembered that when the Register contains the names of both the proprietor of an interest and the mortgagee in possession of that interest the person who is in actual possession must be considered to be the landlord entitled to receive rent. The error which was committed by the two Courts of fact was not to give due weight to the provisions of Section 60, Bihar Tenancy Act, and Section 79, Land Registration Act. Section 60, Bihar Tenancy Act, provides as follows;

Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1878, as proprietor, manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

5. Similarly Section 79, Land Registration Act, provides that

the receipt of any proprietor, manager, or mortgagee whose name and the extent of whose interest is registered under this Act shall afford full indemnity to any person paying rent to such proprietor, manager or mortgagee.

6. Now the effect of these two sections as I read them is that the moment the tenant produces a receipt granted by a person who is registered as proprietor, manager, or mortgagee of a certain estate or of his agent authorised to receive rent, that receipt should be sufficient discharge for the rent. In the case before us the tenant-defendants have produced receipts," and the mortgagee, who is recorded in the land registration record, admits having granted those receipts. In these circumstances it was unnecessary for the rent Courts to go behind the receipts and to try to find out whether the interest of the mortgagee still subsisted or had in law ceased to exist. It was also unnecessary for the Courts below to investigate into the question as to whether the payments were made in good faith or otherwise, when it was clear on the face of the record that the payments purported to have been made to a person who was entitled to receive them. The learned Single Judge of this Court who has affirmed the judgment of the first two Courts observes that

the plaintiff also is a registered proprietor and prima facie she is entitled to recover the rent, and the mere fact that Khojendra's name still stands recorded in Register D does not afford any protection to the tenants, assuming of course, that they actually paid the rent to him.

7. Apparently the learned Judge in making these observations had in view the latter part of Section 60, Bihar Tenancy Act, which states that the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. In the present case the plaintiff was registered as proprietress, and therefore at the first sight it might appear that the tenants were not entitled to plead in defence to the claim of the plaintiff, that the rent is due to a third person." But as I have already stated the plaintiff was registered as proprietress under a deed of gift, and therefore cannot have according to the Register any larger interest than that of the donor. Khojendra Narain, on the other hand, has been recorded as the mortgagee in possession of the very interest in respect of which the plaintiff is recorded as proprietress. That being so, it seems to me that only the first part of Section 60, Bihar Tenancy Act, is applicable to the facts of the present case, and the production of the receipts by the tenants must be held to be a complete answer to the suits. Part 2 of Section 60 cannot apply to the present case, because the expression "third person" which occurs in it evidently refers to a person other than one who is recorded in Register D and cannot mean a person who would be entitled to receive rent according to that Register. In this view I would allow these appeals, set aside the decrees of the Courts below, and dismiss the plaintiff's suits with costs throughout except in this Court where the appellants had not been opposed.

Agarwala, J.

8. I agree.