
(1933) 03 PAT CK 0009
In the Patna High Court

Jagannath Mahadani and Others

APPELLANT

Vs

Udhab Chandra Sinha and Others

RESPONDENT

Date of Decision : 06-03-1933

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1933 Patna 259

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This is an appeal from a decision of a District Judge of Manbhum Sambalpur reversing a decision of the Additional Munsif of Purulia. The land in suit is layali chakran land in village Tahadirri.

2. The plaintiffs are transferees from the mukarraridars of the village. In the record-of-rights the land has been recorded as being held by defendant 1 and his brothers under defendant 2, the zamindar of Jhalda. The plaintiffs sued defendants 1 and 2 for what is in effect a declaration that the entry in the record-of-rights is incorrect in so far as the disputed land is recorded as being held by defendant 1 under defendant 2. The brothers of defendant 1 were impleaded in the suit on 16th January 1929, more than six years after the final publication of the record-of-rights. The trial Court on a consideration of the terms of the original mukarrari granted by the zamindar of Jhalda to the transferor of the plaintiffs, and of the other evidence in the case, came to the conclusion that the entry in the record-of-rights was incorrect and accordingly decreed the suit against defendants 1 and 2. The defendants appealed to the learned District Judge who has reversed the decision of the trial Court.

3. The learned District Judge held that there was no evidence in the case to rebut the presumption of the correctness of the record-of-rights, but, in coming to this conclusion he has not referred to the terms of the mukarrari grant. By this grant the zamindar of Jhalda granted a mukarrari patta of the whole of the village Tahadirri to the predecessor of the plaintiffs, "with all rights and interests," at an

annual rent of Rs. 81.

4. It is contended by Mr. Sushil Madhab Mullick on behalf of the appellants that the record-of-rights being inconsistent with this document should be held to be incorrect, inasmuch as the rights of the parties are regulated by the document which evidences the transaction between them. In my opinion the plain reading of this mukarrari patta is that there is no reservation to the zamindar of any right or interest in the village whatsoever, his sole right being to receive the rent reserved, and, in this view, the entry in the record-of-rights must be held to be incorrect. The learned District Judge further held that the present suit was barred by non-joinder of parties.

5. In the first place, he has found that the brothers of defendant 1 should have been impleaded, and, secondly that the villagers and the village deity were interested in the declaration which the plaintiffs sought to obtain; and that they also should have been impleaded. With regard to the position of defendant 1 however their position is not affected by the declaration which the plaintiffs pray for.

6. The dispute in the present case is in substance merely whether the right to nominate the priest of the village lies with defendant 2 or with the plaintiffs. In any case, the status and rights of the brothers of, defendant 1 or of defendant 1 himself are not affected by such a declaration. I am therefore of opinion that the joinder of the brothers of defendant 1 after the period of limitation, does not affect the plaintiffs' suit. With regard to the non-joinder of villagers and the village deity, their position seems also to be unaffected by the present suit.

7. Mr. S.M. Mullick relies on the decision in this Court in Babu Triloke Prasad Singh Vs. Lala Umanand Lal and Others, , on this point. There it was held that a suit for a declaration of title to land entered in the survey khatian as gair mazrui was not bad for non-joinder of parties of the general public. There seems to be no difference in principle between that case and the present. The learned District Judge also held that the suit was barred by reason of the provisions of Section 42, Specific Relief Act.

8. The reason given by the learned District Judge is that the plaintiffs were not in possession and that there was no prayer for recovery of possession As has been pointed out by Mr. Mullick however the plaintiffs would in any case have no right to possession so long as defendant 1 was rendering the services for which the layali chakran land was granted to him; and it is nobody's case that the rendition of those services has ceased. The provisions of Section 42, Specific Relief Act, therefore have no application to the facts of the case.

9. The main point in this case is whether defendant 1 holds under the plaintiffs or under defendant 2. This appears to be covered by the decision of their Lordships of the Privy Council in Ranjit Singh Bahadur v. Kali Das Debi AIR 1917 PC 8. That was a case in which chaukidari chakran lands were resumed by the Government and transferred to the zamindar under the village Chaukidari Act (Bengal Act 6 of

1870) and the question was whether the original zamindar or the present holder of patni lease of the village was entitled to the land, and their Lordships held that it was the present holder of the patni interest who was entitled to it.

10. The result is that this appeal must be allowed the decree of the lower appellate Court set aside and the decree of the first Court restored with costs to the appellants.