

(1943) 08 PAT CK 0006
In the Patna High Court

Jagdish Chandra Deo Dhabal Deb

APPELLANT

Vs

Gaya Prasad Singh and Others

RESPONDENT

Date of Decision : 20-08-1943

Acts Referred:

Bengal Tenancy Act, 1885 — Section 369
Chotanagpur Tenancy Act, 1908 — Section 21, 68

Citation : AIR 1944 Patna 26

Hon'ble Judges : Meredith, J; Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is an appeal by the plaintiff who is dissatisfied with the concurrent decisions of the Courts below by which they have dismissed his suit which was instituted to eject a tenant from a part of his holding on the ground that he had misused it in a manner contrary to the provisions of Section 21, Chota Nagpur Tenancy Act.

2. The plaintiff instituted the suit on 23rd June 1939, on the allegation that defendants 1 to 6 and sub-tenant defendant 7, should be ejected from plot 1616 in Khata No. 19 of village Jagselai on the ground that a misuse has been committed regarding this plot by building houses thereon, although the land was let out for cultivation purposes and was fit for cultivation. One of the issues in the case was "Is the suit maintainable in its present form and for the reliefs claimed?" because the case of the defendants 1 to 6 was that as they had taken a settlement of 28 plots by one contract or lease, the suit for ejectment from a part of the holding was not maintainable. The learned Rent Suit Deputy Collector on examining the settlement deed of 16th September 1914 and the evidence in the case, held that Gaya Prasad, the defendant, with whom the settlement was made went beyond his rights by settling house-building tenants on the land as clearly under the patti he had no such right, and that it was clear that the tenancy which was originally an agricultural tenancy has been converted into a non-agricultural homestead tenancy by Gaya Prasad. The learned Rent Suit Deputy Collector says that if this was the only issue there can be little doubt that

the plaintiff would be entitled to a decree against Gaya Prasad. But says he

The suit has been filed in respect of only a small portion of the holding of Gaya Prasad viz., for plot 1616 and the question is whether such a suit so framed can succeed for the reliefs claimed.

3. Relying upon the case in *Rai Kamaleswari Persad Singh v. Maharaja Harballabh Narain Singh Bahadur* (1905) 2 C.L.J. 369 and his view of the provisions of the Chota Nagpur Tenancy Act, the learned Rent Suit Deputy Collector came to the conclusion that the suit was not maintainable and must fail.

4. Against this decision there was an appeal to the Judicial Commissioner who came to the same conclusion that an ejectment suit for a part of a holding was not maintainable. The plaintiff then asked that leave of the Court should be granted to him to amend the plaint in order to bring the whole holding in suit. The learned. Judicial Commissioner refused the prayer because the plaintiff insisted throughout the trial in the lower Court that he was entitled to the relief claimed and never sought the leave of that Court to amend it, and further observed that by amending the plaint the plaintiff would be bringing in various other plots with various other holders and the value of the suit will be increased. For these reasons he refused the plaint to be amended and dismissed the appeal.

5. In second appeal before this Court Mr. P.R. Das, who appears for the appellant, argues that the case in *Rai Kamaleswari Persad Singh v. Maharaja Harballabh Narain Singh Bahadur* (1905) 2 C.L.J. 369 relied on by the Courts below was a case under the Bengal Tenancy Act where there is no provision like the one to be found in Section 68, Chota Nagpur Tenancy Act, which provides that no tenant shall be ejected from his tenancy or any portion thereof. Emphasis is laid on the words "or any portion thereof." It was also argued that although Section 22 speaks of an ejectment from the holding it must include ejectment from a part of the holding and that the provisions of Section 22 really do no more than lay down the grounds of ejectment. In my opinion this argument is not sound. As I put it in the course of the argument how can a landlord be allowed to split up his tenant's tenure by declaring that he has no right to a portion of the land comprised therein because a misuse has been committed but at the same time he has right to remain in possession of the remainder? This was the view taken up by a Division Bench of the Calcutta High Court in *Ram Kanie Mandal v. Ganesh Chunder Sen* (1922) 33 C.L.J. 513 . I am reading from page 514:

It is clear that the plaintiffs would in no view of their case be entitled to a decree for ejectment. In their plaint they have stated that these three bighas form portion of the under-tenure held by Khudiram. If this be so, they cannot break up Khudiram's tenure by declaring that he had no longer any rights to this portion of it although he still held the remainder.

6. This principle is in no way dependent on the 9 provisions of the Bengal Tenancy Act under which that case was decided, but is a general principle" of law

applicable to cases between the landlord and the tenant.

7. The argument that in Section 68 the words used by the Legislature are ejectment from a tenancy or a portion thereof is completely met by the observations of Venkataramana Rao, J. in *Trustees, Chokkanathaswami Temple Vs. Poovanna Navanna Vadivelmuruga Nadar*, where he points out, while discussing a similar provision under the Madras Estates Land Act, that the reference to a part of the holding may well be to emphasise a preservation against ejectment save as provided in the Act because otherwise he could not find in the Madras Estates Land Act any provision made for the ejectment of the raiyat from a part of the holding although provision was made for sale or purchase of a part of the holding. I also cannot find any provisions in the Chota Nagpur Tenancy Act for the ejectment of a raiyat from a part of the holding although the Act provides clearly for sale or purchase of a part of the holding or tenure (see Sections 11, 23(a), 46 etc.).

8. The principle laid down in the decision in *Rai Kamaleswari Persad Singh v. Maharaja Harballabh Narain Singh Bahadur* (1905) 2 C.L.J. 369, although a case under the Bengal Tenancy Act, has been rightly applied in this case. Attention may also be drawn to the case in *Rama Chetty v. Arunachalam Chettiar* AIR 1916 Mad. 1016 where in a suit for ejectment based on the ground that the landlord has a right to eject a tenant by reason of Section 151, Madras Estates Land Act, it was held that the landlord has the right to sue for ejectment only when the holding as a whole was rendered substantially unfit for cultivation for agricultural purposes by the acts of the raiyat committed on the whole or any part of the holding. This case follows the observations of their Lordships of the Judicial Committee (1907) 34 Cal. 718 e in *Hari Mohan Misser v. Surendra Narayan Singh* where the tenant put up an Indigo factory on a portion of the entire block of land which was given to him for agricultural purposes. Their Lordships observed as follows:

The law which the High Court found to have been violated by the District Judge's decision is thus stated: "Where as in this case, land has been let out for agricultural purposes generally, the erection of an indigo factory on a part of such land must render it unfit for the purpose of the tenancy, because, the purpose of the tenancy being the cultivation of crops, that is agricultural purposes, the portion of the land built upon will evidently be unfit for such purposes". That proposition of law is laid down broadly, without reference to the circumstances of individual cases, without regard to the size of the holding or of the area withdrawn from actual cultivation, "or to the effect of such withdrawal upon the fitness of the building, taken as a whole, for profitable cultivation.

9. This case then clearly decides that the ejectment should be from the whole of the holding provided it is found that owing to the misuse of a portion thereof the whole holding has been rendered unfit for cultivation. We are informed that on all the other plots comprised within the tenancy of defendants 1 to 6 buildings have been put up. If this is so then the entire holding has been misused and there

would be no answer to the claim of the plaintiff for ejecting the defendants from the entire tenancy. But this is not what the plaintiff has sought for in this case. He seeks to eject the defendants from a portion of the tenancy irrespective of what happened to the remainder. The Courts below, in my opinion, took a correct view. But it has been argued on behalf of the appellant that he is entitled to a decree on the facts found which are not denied and prayed that a decree for ejectment from the entire holding be passed against defendants 1 to 6 and 7. But as I have stated the question whether the whole holding has been rendered unfit for cultivation or has been misused against the original terms of the contract between the parties has not been and cannot be decided upon the evidence in the case. Moreover, it is not desirable that the larger question should be decided in a suit to which the other sub-lessees of defendants 1 to 6 are not made parties.

10. In the alternative it was also argued that the Court below should have allowed the prayer of the plaintiff for amendment of the plaint. Mr. Bose appearing on behalf of the respondent on the other hand argued that we should not accede to this prayer at this stage because it would deprive him of a valuable right, namely limitation. He submitted that the plaintiff's suit would be barred by limitation on the date of the amendment because the misuse claimed was as far back as 1938. Mr. De on behalf of the appellant drew our attention to a recent decision of this Court in *Gaya Prasad Singh Vs. Jagdish Chandra Deo Dhabaldeb*, that is to say, between the same parties as in the present appeal, where it was held that an erection and maintenance of huts is a misuse of the holding which constitutes continuing wrong to the landlord and which continues as long as the huts remain standing and therefore there is a fresh terminus a quo from every moment that the wrong continues. This was a case, as I have said, between the same parties where the provisions of Section 233, Chota Nagpur Tenancy Act, relied on by Mr. Bose was also considered. We are bound by this decision and I would hold that if the plaintiff was allowed an amendment of the plaint it could not cause any prejudice to the respondent. But I agree with the view of the learned Judicial Commissioner when he points out that the plaintiff by amending the plaint would necessarily have to bring in the other 27 plots with various other holders thereof who are now in possession of erected buildings thereon, and that the value of the suit be increased. The proper course then would be for the plaintiff to bring a fresh suit, in which he would implead all the persons in possession of the entire holding, for ejectment from the entire holding. The result is that the appeal fails and must be dismissed with costs.

Meredith J.

11. This second appeal by plaintiff arises out of concurrent decisions of the Courts below, dismissing a suit brought by him for ejectment of an occupancy raiyat and his sub-tenant, from one plot of the holding, on the ground that the raiyat had used the land in a manner inconsistent with the purposes of the tenancy by sub-letting it for building purposes.

12. Respondents 1 to 6 are occupancy raiyats under the appellant in respect of khata No. 19, situated in village Jugselai, a suburb of Jamshedpur town. There are 28 plots in the holding, and all but six have been recorded as korfa of different; tenants under respondents 1 to 6 with houses built thereon. Only two plots have been recorded in the khatian as khas plots of respondents 1 to 6 with houses standing thereon. Respondent 7 has been recorded as korfa in respect of plot 1616, and plot 1617 under respondents 1 to 6, of which plot 1617 has been recorded as containing a house and 1616 has been recorded as gora.

The suit was brought for a ejectment of both sets of defendants from plot 1616 only, the sub-tenants of the remaining plots not being impleaded.

Both the Co arts below have found that there was misuse of the land, since the original settlement was for cultivation but both have also taken the view that no ejectment suit could lie for a part of the holding and that the suit must consequently fail for non-maintainability.

13. The suit was u/s 22, Chota Nagpur Tenancy Act, the relevant portion of which provides that an occupancy raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground that he has used the land comprised in his holding in a manner which is not authorized by Section 21. Section 21 authorises the occupancy raiyat, inter alia, to use the land in any manner which does not render it unfit for the purposes of the tenancy. The Courts below have relied upon *Bai Kamaleswari Persad Singh Bahadur v. d Maharaja Harbullabh Narain Singh Bahadur* 2 C.L.J. 369 , wherein it was held that in an ejectment suit u/s 155, Ben. Ten. Act, the claim must include all the lands comprised in the tenancy. If the claim is limited to a portion of the land, the suit is badly framed and must fail. Mr. P.R. Das, however, for the appellant attempts to distinguish this ruling on the ground that the provisions of the Bengal Tenancy Act are not identical with those of the Chota Nagpur Tenancy Act. He points to Section 68 of the Act, which provides:

No tenant shall be ejected from his tenancy or any portion thereof except in execution of a decree, or in execution of an order of the Deputy Commissioner passed under this Act.

14. The words "any portion thereof" are not in the Bengal Tenancy Act. In my opinion, however, that cannot alter the position, and the ruling cannot be distinguished. The question has been very thoroughly analysed by Venkataramana Rao J. in a Madras case, *Trustees, Chokkanathaswami Temple Vs. Poovanna Navanna Vadivelmuruga Nadar*, with reference to the Madras Estates Land Act, which does contain in Section 9 provisions similar to those in Section 68, Chota Nagpur Tenancy Act. In Section 9 of that Act also the words "any portion thereof" are used. I find myself in complete agreement with the reasoning of Rao J. when he says that these words do not authorise an ejectment suit for a part of the holding, and were no doubt merely intended to emphasise the fact that the tenant cannot be ejected from his holding, or even from any

portion thereof except in execution of a decree. The words do not mean that the decree is not to be for ejectment from the entire holding, and it seems to me that there cannot be a suit for ejectment from a portion of the holding in the absence of any positive provision in the Act for any such suit. Such a suit would have the effect of splitting up the tenancy and creating a new holding, and difficulties would inevitably arise with regard to the question of rent. Moreover, it is significant that the vital Section 22 does not contain the words "or any portion thereof," but says that the raiyat shall not be ejected from his holding. As pointed out by Rao J. in the case just noted, speaking of Section 151, Madras Estates Land Act, which corresponds to Section 22, Chota Nagpur Tenancy Act, the remedy is given in respect of the holding, not in respect of the land.

15. I agree with the Courts below that the suit was not maintainable as framed. Mr. Das, however, has urged that we ought to allow even at this stage an amendment of the plaint to include the whole holding. A similar prayer was made before the lower appellate Court, though not before the trial Court, and was refused. In my opinion, it would not be desirable to allow the amendment prayed for. It would make too sweeping a change in the character of the suit. The suit has been brought in respect of a single plot out of 28 in the holding, the majority of which are in occupation of other subtenants who have also built thereon. Mr. Das argues that the subtenants are not necessary parties. Technically in that he may be correct, but if they are not legally necessary parties, they are, in my judgment, proper parties, and it is desirable that any such suit should be heard and decided in their presence. It would, therefore, be necessary to implead a large number of new defendants. Mr. Bose for the respondents argues that amendment of the plaint would involve a question of limitation, since u/s 233 of the Act suits for ejectment of an occupancy raiyat or a non-occupancy raiyat on any of the grounds mentioned in Section 22 shall be instituted within two years from the date of the misuse complained of. There is a ruling of a Division Bench of this Court in Trustees, Chokkanathaswami Temple Vs. Poovanna Navanna Vadivelmuruga Nadar, which is directly against Mr. Bose's contention. However that may be, I do not think that the other sub-tenants should be deprived of the opportunity which would not be available to them in the event of amendment of the plaint being allowed.

16. Questions of court-fees will also arise, and upon the whole I think it most equitable in this case that the, appellant should be left to seek his remedy by a fresh suit properly framed, particularly as after amendment there would have to be a complete re-hearing of the whole matter. It is only just too that the appellant should meet the costs which both parties have had unnecessarily to incur owing to his failure to frame his suit in accordance with law.

17. I would, therefore dismiss this appeal with costs.