

(1936) 10 PAT CK 0008
In the Patna High Court

Jagdish Narayan Singh

APPELLANT

Vs

Alakhdeo Narain Singh and Others

RESPONDENT

Date of Decision : 09-10-1936

Acts Referred:

Bihar Tenancy Act, 1885 — Section 26(o)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1937 Patna 38

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—There is no substance whatever in this application and the rule must be discharged. The Judge in the exercise of his discretion has rejected the application to be added as an intervener. Of a person who deposited the landlord's fee u/s 26(o), Bihar Tenancy Act, in January of 1936, the rent suit having been compromised on 21st December 1935. His tenancy dates therefore from January 1936 and not before. It is a matter of utter indifference that he may have engaged with the tenant for transfer prior to that date. But I do not decide this case on the question of its merits, but I decide it on the question of jurisdiction. If I were to hold in this case that the petitioner had made out his case and the Judge was bound to join him as an intervener, I should be guilty of legislating. The Act gives the Court a discretion. If I order the petitioner to be added as an intervener, I should be disposing of that discretion which undoubtedly is in the Judge.

2. Amongst the authorities relied upon is the decision in Nilambar Jha v. Chandradhari Singh (1929) 10 PLT 442. That was a decision of Das, J., as he then was, to the effect that the Judge was bound to dispose of the application, and in no way indicated which way the Court was to decide it; and it is quite clear that it would have been impossible for the learned Judge to have come to a conclusion to that effect. It is merely, as I have said and repeat, a decision that the application should be heard and determined according to law. Nor is the decision of their Lordships of the Judicial Committee of the Privy Council in AIR

1935 185 (Privy Council) of any help to the petitioner. That was a case in which one of the applicants had not had a proper hearing before the Subordinate Judge, and in supporting the judgment of the High Court given u/s 115, Civil P.C. their Lordships of the Judicial Committee of the Privy Council indicated that the Judge of the trial Court had acted with material irregularity in not giving a proper hearing to the application, and it is on that footing that the decision proceeded. It is impossible to say in this case that the Judge has not exercised his discretion. The tenancy, as I have said, came into existence by reason of the deposit after the suit had been disposed of; and in my judgment the learned Judge in the Court below, in those circumstances, was entitled to exercise his discretion one way or the other. The rule is discharged with costs, hearing fee two gold mohurs.