

(1926) 06 PAT CK 0003
In the Patna High Court

Jawahir Lal

APPELLANT

Vs

Fateh Mahton and Others

RESPONDENT

Date of Decision : 04-06-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 69, 70

Citation : AIR 1926 Patna 514

Hon'ble Judges : Dawson-Miller, C.J.; Foster, J

Bench : Full Bench

Judgement

Dawson-Miller, C.J.—In these cases the landlord sued for rent against; various tenants. Four suits in all were brought with which we are concerned in these appeals. The suits were brought for recovery of arrears of rent for the years 1325 to 1328-F. inclusive. With regard to the year 1328.F. the defence, was that for that year proceedings had taken place under Rs. 69 and 70, Ben. Ten. Act, and the landlord's share had been ascertained, With regard to the years 1325 to 1327 the dispute was as to the amount of the crop grown in those years, the rent being bhaoli rent recoverable under the batai system; but; it appears, according to the findings of both the Munsif and the District Judge on appeal that there had been an appraisalment with the consent of the parties for the years 1325 to 1327 as to the amount of the crop grown those years.

2. These appeals arise out of two suits numbered (sic) and 77 of 1922., There was an appeal in each of these suits to the District Judge by the landlord and there was also an appeal in each of the suits by the tenants or some of them. The landlords appeals succeeded and the tenants' appeals failed, and the result is that we have before us to-day four appeals arising out of the two suits in each of which the same tenant is the appellant. In Appeals Nos. 547 and 549 which relate only to the year 1328, the only question is whether the proceedings under Sections 69 and 70, Ben. Ten Act;, were regular and determined the amount of the tenants' liability for that year. The Munsif found that those proceedings were regular and decreed the suit upon that basis in so far as that year was

concerned. That however was only one of the years for which rent was claimed in the suit.

3. On appeal the District Judge overruled that decision of the Munsif as to the year 1328 finding that the proceedings which purported to have been taken u/s 70, Ben. Ten. Act, were irregular and ultra vires and not binding upon the landlord. He accordingly allowed the appeal to that extent and directed that the case should be remanded to the Munsif to ascertain the amount of the produce in the year 1328.

4. A preliminary point has been taken in regard to these two appeals that this being an order of remand only no appeal lies from such an order. The appellant, on the other hand, contends that the order of remand was really one made under Order 41, Rule 23, Civil P.C., the point upon which the learned Munsif had decided the case being really a preliminary point, the decision of which made it necessary for him to enter into any of the other questions raised in the suit with regard to that particular year. In this respect I think that he is right, but at the same time as the remand was not made with regard to the whole of the suit, but only with regard to a portion of it, that is to say, with regard to the rent of one only out of four years' rent which was claimed, it does not appear to me to come within the provisions of Order 41, Rule 23.

5. The rule provides that:

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point, and the decree is reversed in appeal, the appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded.

and so on. It has been held in the High Courts of Allahabad and Madras, and I think rightly, that this rule applies only to cases where the whole suit has been determined upon a preliminary point, and not to cases where a portion only of the suit has been so decided and reversed on appeal. I think further that there is wisdom in the rule which prevents appeals from orders of remand when they do not affect the whole case; for an appeal is always allowable after the questions for the determination of which the case was remanded have in fact been determined. Then when the case comes up again on appeal, after that the whole question can be gone into in that appeal, but it is certainly undesirable that cases should be heard on appeal piecemeal, and that every order of remand which is made should be subject to appeal to a higher tribunal, when after the matters to be decided on remand have been decided the whole case may then come on appeal to the higher tribunal. I consider therefore that in so far as Second Appeals Nos. 547 and 549 are concerned, they must be dismissed, on the ground that no appeal lies at this stage.

6. With regard to the other appeals Nos. 548 and 550, they relate to the rent of the previous years. The Munsif who tried the case, and the District Judge who affirmed his decision on appeal, have both accepted the evidence of the plaintiff

as to the actual outturn during the years in question and have rejected the evidence of the defendant and have passed a decree based upon the plaintiff's evidence. The only questions urged before us are that although it was alleged in the plaint that the system was the batai system, the evidence in the case produced by the landlord is based upon an appraisement made between the landlord and the tenants during the years in question; and as the defendants had pleaded in their written statement that no custom of appraisement existed the Court ought to have decided whether such a custom existed or not. It is not accurate to say that the plaintiff in his plaint relied upon any custom of appraisement, but (sic) the said was:

that the system of batai is prevalent in respect of the bhaoli produce of the said takhta and appraisement is made with the consent of the landlord and the tenants, the landlord's share being the half of the produce,

7. It is quite obvious that what is alleged there is not a custom of appraisement. What is alleged is that the system is batai, but where the landlord and the tenants consent then appraisement is made. It is quite obvious that anything can be done by consent between the parties, and there is no suggestion in the plaint that a custom of appraisement exists. It was unnecessary therefore for the Courts to enter into the question whether any custom of appraisement existed in this case. The evidence given on behalf of the plaintiff shows that in fact an appraisement was made during the years in question and it was upon that basis that the Court assessed the value of the rent payable to the plaintiff. The appellant has contended that evidence ought to have been given not merely of the appraisement made in the years in suit but of the value of the crops or the actual outturn of the crops during the previous years. It seems to me that the best evidence possible as to the value of the crop during the years in suit was the evidence of actual appraisement made at the particular time for which the rents are claimed. This part of the appeal also fails.

8. In the result these appeals are in each case dismissed with costs.

Foster, J.

9. I agree.