

(1946) 10 PAT CK 0005
In the Patna High Court

Jena Munda

APPELLANT

Vs

Dukhan Pahan and Others

RESPONDENT

Date of Decision : 15-10-1946

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 139(5)

Citation : AIR 1948 Patna 10

Hon'ble Judges : Meredith, J

Bench : Division Bench

Judgement

Meredith, J.—This second appeal is by defendant 2 from a judgment of reversal decreeing the suit. This suit was for declaration of title to and recovery of possession over the holding of one Sukra Mund deceased, comprising Khata No. 44 of village Jaipur in the Ranchi district of Chota Nagpur. The material facts may be briefly stated as follows. Some time after the death of Sukra Munda, the present appellant Jena Munda brought a proceeding before the Deputy Commissioner u/s 139(5), Chota Nagpur Tenancy Act, asking to be restored to possession of Sukra's holding on the ground that he was Sukra's ghardamad and as such, in the absence of any surviving son entitled to succeed to the property. He had come into possession after Sukra's death, but had been dispossessed by the landlord who had made settlements of part of the holding with, the present plaintiff, brother of Sukra, and the rest with the present defendant 3, on the assumption that Sukra had died heirless. He impleaded, besides the landlord, both the present plaintiff and defendant 3, before the learned Deputy Commissioner. The latter by his order, dated 23-7-1941, held that Jena was a ghardamad and entitled to the property, and ordered restoration of possession, which was duly restored on 11-2-1942. The proceedings before the Deputy Commissioner were contested by the landlord, and the Deputy Commissioner observed that Sukra's brother, the present plaintiff, did not appear before him and was taking no interest. Thereafter the present suit was tiled, impleaing the landlord as defendant No. 1, Jena as defendant 2, and the other settlement holder as defendant 8. The plaintiff's case was that Jena was

not a ghardamad, that he (the plaintiff) had taken settlement from the landlord because he was not then aware of the legal position, and that neither the settlement with him nor that with defendant 3, had been effective. The suit was contested only by the present appellant though both the landlord and defendant 3, also filed, written statements.

2. The learned Munsif held that Jena was not a, ghardamad or entitled to succeed as such, his main reason being that according to the custom, to become a ghardamad a man must be taken into his father-in-law's house for two years.as a labourer, and thru having proved satisfactory must be married to the daughter, no son being then living, and must be formally adopted as ghardamad and give up all claim to his lands in his own village. Even then he would get only such lands as might be allotted to him by the village panches. But while the appellant Jena satisfied some of these conditions he did not satisfy all, since it became apparent from the evidence that Jena was taken into the household some 18 years previously when a boy and was married some years later to Sukra's daughter while Sukra had a son Mahadeo still living. This Mahadeo died only 8 or 10 years before the suit. Despite this finding, the Munsif dismissed the suit for defect of parties, holding that the plaintiff should have impleaded two sons of another brother of Sukra's who had died leaving two sons who had gone away to Assam. The learned Additional Judicial Commissioner in appeal agreed with the Munsif's view that Jena had no rights as a ghardamad, and, holding that the suit should not fail because the two sons of Sukra's deceased brother had not been impleaded, he decreed it.

3. Two legal points have been urged before us. First, that Section 258, Chota Nagpur Tenancy Act, was a bar to the suit, as it was not shown that the proceedings before the Deputy Commissioner were vitiated either by fraud or want of jurisdiction. Secondly, that the Judicial Commissioner was wrong in holding that the suit was not bad for defect of parties. For reasons which will presently appear it is unnecessary to pronounce any opinion upon either of these points.

4. A perusal of the judgments shows that both the Courts below, and particularly the learned Additional Judicial Commissioner, have misdirected themselves upon the position of the ghardamad in the Munda community, and have consequently drawn wrong inferences from the evidence and from their own findings of fact. They have confused the Munda customary law with that of the Uraons, an entirely different tribe. Possibly, the learned Additional Judicial Commissioner was misled by the fact that in the plaint the plaintiff is described as an Uraon, but that is clearly a clerical error since it was not disputed that the plaintiff was the own brother of Sukra Munda, and the plaintiff himself in his evidence definitely stated that he was by caste Munda.

5. The learned Additional Judicial Commissioner, following the ruling reported in Naika Uraon Vs. Butna Uraon and Others, , lays down five conditions for a ghardamad to succeed, namely, (1) that the father-in-law was sonless, (2) that

the ghardamad lived in the house of the father-in-law for two years before his marriage; (3) that he was then married; to the daughter; (4) that there should be an intention all along in the minds of the parties that the status should be acquired; and (5) that the ghardamad had definitely given up his title to succeed to any property of his natural father. This was a case, however, not on the Munda custom, but on the Uraon custom. Practically the only authority on the Munda customs is Rai Bahadur S.C. Roy's book on the Mundas, and the Courts should therefore have confined them-selves to what was laid down in that book and to the evidence. Neither in the book nor in the evidence is any condition specified that the marriage must have taken place after the death of the son. What the Rai Bahadur says is, at p. 433.

The gor jonrea or ghar-dijoa who lived with his sonless deceased father-in-law till the death and assisted him in the cultivation and other affairs till his death, will get all the movable property left by the deceased, and such share of the real property, if any, as according to the circumstances the panch may think it proper to give him, the rest going to the nearest male agnate or agnates.

If then we ignore the fact that Jena was married to the daughter before the death of the son, and not adopted as a ghardamad until after the death of the son some years after the marriage, it is apparent that the Courts below have really arrived at the necessary findings in-favour of the appellant.

6. Both Courts have found that Jena had definitely given up his title to succeed to any property of his natural father in his own village, and indeed the Record of Rights of his village Tilta shows Jena's brothers had been recorded, but not Jena. They have also found that when Sukra died he was sonless, that Jena was living in the house and looking after the cultivation, and came into possession after Sukra's death. They have also found that he lived in the house as a boy for some years before his marriage, and was then married to the daughter.

7. It is true that the learned Additional Judicial Commissioner also points out that according to Rai Bahadur S.C. Roy the ghardamad would get only such property as the panchas would allow him, whereas it is known that Jena did not claim any part of the lands as given to him by the panchas. That, however, in my opinion, was not a correct statement of Jena's case. Jena's case was that he was adopted as ghardamad, an heir to the rajha's lands of Sukra, in the presence of the punches and with their approval, which was practically the same thing as saying that the lands had been allotted by the punches. The position is so clear upon the evidence that, in my opinion, there is no need to delay matters by a remand for further consideration by the Courts below of the facts in the light of these observations, for that Jena was a ghardamad and entitled to succeed was practically admitted. As is apparent from the learned Munsif's judgment, Jena examined a number of witnesses to prove that after the death of Sukra's son Mihadeo, Sukra adopted him as ghardamad in the presence of punches and with the consent of the plaintiff, and that Jena came into peaceful possession of the suit lands after Sukra's death and was eventually forcibly dispossessed not by

the plaintiff but by the landlord. The Courts below were very much impressed by the fact that Jena's marriage procession came from Tilta, but that was natural and inevitable, for he was not adopted as ghardamad at the time of his marriage, but only after Mahadeo's death. That circumstance if properly understood could not detract in any way from Jena's case. Several witnesses for Jena also deposed that there was a custom amongst the Mundas of the inheritance of rajha's lands (with which we are alone concerned in this case): by a ghardamad. The plaintiff's witnesses also made most significant admissions. The plaintiff's first witness-admitted that after Sukra's death Jena at first cultivated the suit lands, and previously he used to help Sukra in cultivation in his old age. More significant still the plaintiff's witness 2 admitted that a ghardamad can get the rajha's lands if he be adopted with the consent of village panches, and he further deposed that after Mahadeo's death Jena-not only looked after Sukra's cultivation but even met the marriage expenses of Mahadeo's daughter Chamni.

8. I will only add one thing. The course of events should have aroused the suspicion in the minds of the Courts below that the plaintiff's opposition to Jena was wholly belated and that he had been merely set up by the landlord after the latter had signally failed against Jena in the proceedings before the Deputy Commissioner. The plaintiff, Dukhan Pahan, made no attempt to oppose Jena in the proceedings before the Deputy Commissioner. He set up no case of heir-ship on his own behalf then. Though he says that he never got notice of those proceedings, he has made no attempt to prove that. The Deputy Commissioner before he observed that Dukhan was taking no interest must surely have satisfied himself that he had received notice. Not only that, but according to Dukhan's own case as set out in the plaint he was content after Sukra's death to take settlement of a portion of the land upon a salami of Rs. 200. Had he then regarded himself as the heir entitled to succeed, he would have done nothing of the sort. He says that he was not then aware of the legal position. The legal position being only another way of saying "the custom of his own community" that is, of course, all nonsense. When dealing with these simple aborigines, so liable to exploitation at the hands of more sophisticated people, it is essential for the Courts to be perpetually on their guard to take a commonsense view and to endeavour to penetrate through the statements made before them to the actual realities behind. To have allowed "the decision of the learned Additional Judicial Commissioner to stand would have been to work grave injustice to a man who had quite evidently abandoned all his rights to his property in his own village upon the assurance that for services rendered he would succeed to the property of his sonless father-in-law

9. I would allow the appeal and dismiss the suit with costs throughout payable to the appellant, Jena Munda.