
(1921) 01 PAT CK 0015
In the Patna High Court

Jeo Lal Singh and Others

APPELLANT

Vs

Raja Wazir Narain Singh

RESPONDENT

Date of Decision : 03-01-1921

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 178, 22, 7

Citation : 63 Ind. Cas. 764

Hon'ble Judges : Ross, J;Jwala Prasad, J

Bench : Division Bench

Judgement

Jwala Prasad, J.—This is an appeal against the decision of the Judicial Commissioner of Chota Nagpur, dated the 26th of December 1918, dismissing the suit of the plaintiffs.

2. Tire defendant-respondent obtained an ex parte decree against the plaintiffs on the 3rd of October 1913, u/s 178 of the Chota Nagpur Tenancy A at, for arrears of rent and for ejecting the plaintiffs from the land in question. In execution of that decree the defendant obtained possession of the property through the Court on the 29th May 1914 The present suit was instituted her the plaintiffs on the 7th of September 1915, basing their cause of action on their actual dispossession, alleged to have taken place on the 29th of May 1914 (Aghan 1323 F.S.). In short the suit of the plaintiffs was to set aside the aforesaid to parte decree passed by the Deputy Commissioner on two grounds, (1) fraud and (2) want of jurisdiction.

3. The Courts below have concurrently held that the plaintiff failed to prove that the decree was obtained on account of any fraud, practised on him, by the defendant-respondent That point has consequently become conclusive and is not raised before no now. The only point pressed before us is that the aforesaid ex parte decree was passed without jurisdiction. This contention is based" upon the entry in the Survey Record of Rights, which was finally published on the 10th of September 1910. In the Khewat, Exhibit 1, the plaintiffs have been shown as having khuntkatti rights in the lands in question under the proprietor of the

village. It is said that in accordance with the aforesaid Survey entry the plaintiff are in fact raiyatt having khuntkatti rights" with respect to the land in question within the meaning of the term in Section 7 of the Chota Nagpur Tenancy Act. The incidents of a raiyat having khuntkatti rights are governed by the provisions relating to occupancy raiyats by virtue of Section 37 of the Act, and u/s 22 such a raiyat cannot be ejected from his holding except in execution of a decree passed upon the grounds mentioned in that section. The contention is that the suit, in which the ex parte decree was passed, was brought u/s 178 of the Act for the realisation of the arrears of rent and for ejectment of the plaintiffs, and not on the grounds mentioned u/s 22 of the Act. Consequently the decree passed by the Deputy Commissioner ejecting the plaintiffs was without jurisdiction. The learned Judicial Commissioner has held that the Survey entry does not necessarily show that the plaintiffs possessed the Right of a raiyat having khuntkatti rights. He is of opinion that the entry really means that the plaintiffs were tenure-holders in respect of the land in question. The learned Judicial Commissioner further holds that it cannot be definitely said that the plaintiffs were permanent tenure-holders and not temporary tenure-holders, and if the latter, the decree of the Deputy Commissioner was not without jurisdiction. With that view of the Judicial Commissioner we are in full concurrence. "He is supported by Rule 12(a) of the rules contained in the Government Notification No. 3578. L.R., dated the 9th of November 1909. printed at page 209 of Mr. Reids Chota Nagpur Tenancy Act According to that rule, in the khewat, the character and interest of the proprietors and tenure holders are required to be shown. The entry of khuntkatti rights in the present case happens to be in the khewat and, therefore, the status of the plaintiffs was recorded as tenure-holders. It is possible that they may have held some lands in their khas possession and to that case such lands would be recorded as bakasht in the khatian under Clause (c) of Rule 12. Against this view it is argued that such a class of tenants is not contemplated by the Chota Nagpur Tenancy Act, and hence the entry in question stating that the plaintiffs had khuntkatti rights must necessarily relate to their having been raiyats, and not tenure holders.

4. Reference has been made to Section 4 of the Act in support of this contention. This section enumerates the classes of tenants under the Chota Nagpur Tenancy Act. But as in the Bengal Tenancy Act so in the Chota Nagpur Tenancy Act the enumeration of tenants is by no means exhaustive, as is obvious from the opening words of the section:

There shall be for the purposes of this Act the following classes of tenants.

5. Again Section 127, which especially refers to the preparation of the Record of Rights relating to khuntkatti rights mentioned in Clause (c) clearly implies classes of tenants other than those specially mentioned either in Section 127 or in any other part of the Act. We are, therefore, not prepared to differ with the view taken by the Courts below as to the interpretation of the Survey entry in question. No doubt a permanent tenure-holder is not liable to ejectment, and if

the plaintiffs had such an interest, the decree in question would have been without jurisdiction. But there is nothing in the record to show that the interests of the plaintiffs were necessarily permanent and not temporary.

6. The suit, which resulted in the decree in question, was brought u/s 178 of the Act; and it must have been brought necessarily upon the ground that the plaintiffs were only tenure holders. The plaintiffs, according to the findings of the Courts below, had received notice of that suit, but failed to attend the Court and to contest it. The plaintiff in that case, defendant in the present litigation, must presumably have given evidence and the Court must have been satisfied of the conditions requisite for passing a decree for ejectment, namely, the present plaintiffs were only temporary ten ire-holders. The presumption of the correctness of the decree is against the present plaintiffs, and it was for them to show that the decree was without jurisdiction, They have not produced even the judgment of the Court and the pleadings in that case. The decree filed does not help the plaintiffs in the least on the other hand, it supports the case of the respondent. Therefore, the plaintiffs must be held to have failed to, prove that the decree, which they seek to set aside, was passed without jurisdiction. They are not entitled, therefore, to any relief and the Court below was right in dismissing the suit. The appeal must, therefore, be dismissed with costs.

7. We cannot, however, help expressing, our disagreement with the view of the Court below as to the meaning and scope of Sections 127 and 128. The Court below thinks that the order of the Local Government for the preparation of the Record of Bights embodying the khuntkatti and other rights was not passed and published u/s 128 of the Act. Section 128 says that:

When a notification has been published u/s 127, directing the preparation of a record, the provisions of Section 81 Section 84, Section 84, Sub-sections (1) and (2), and Sections 89 to 96, so far as they may be applicable, shall apply as if such record were referred to in those sections.

8. The Courts below have held that the order and Notification u/s 127 were published u/s 83, Clause (2), and, therefore, the requirements of Section 128 were complied with. The record in question, therefore, was published u/s 128 and as such has the effect of being conclusive evidence u/s 132 of that Act. The learned Judicial Commissioner was clearly wrong in holding, that Section 132 did not apply to the, record in question.

Boss, J.

9. I agree.