

(1933) 07 PAT CK 0017
In the Patna High Court

Jyotindra Mohan Chakrabarty and Others

APPELLANT

Vs

Kanai Mahto

RESPONDENT

Date of Decision : 17-07-1933

Acts Referred:

Citation : AIR 1934 Patna 66 : 148 Ind. Cas. 303

Hon'ble Judges : Dhavle, J

Bench : Single Bench

Judgement

Dhavle, J.—The judgment of the lower Appellate Court is a judgment of reversal, and the learned the Advocate for the respondent has practically found it impossible to support it, though he has naturally had to refrain from admitting anything and has done his best to support it. The suit was for a declaration that the plaintiffs were entitled to direct possession of a 6 annus 8 gandas share in a bandh or tank, as regards which the Record-of-Rights showed that the defendant was a raiyat, with" inter alias 4 annas interest created in 1921 by a patta granted by Balaram Goswami, one of the three men that were bought out by the plaintiffs in 1916 but forcibly remained in possession. The defendant also put forward a patta of 1923 in respect of another 4 annas in the same bandh executed by Jagannath Goswami, another of the three judgment-debtors of the plaintiffs. The defendant's case was that the bandh was the ancestral raiyati holding, and that the pattas he took from the Goswamis which are referred to in the Record-of-Rights, were merely confirmatory pattas.

2. The learned Munsif gave detailed reasons for disbelieving the defendant's case and held that the Record-of-Rights was wrong so far as the plaintiff's share in the bandh was concerned.

3. Babu Jatindra Nath Ghosh, the learned Subordinate Judge who heard the appeal and arrived at a different conclusion, observes in the first place that:

the documents (Exs. Nos 1 to 4) relied on by the plaintiffs do not prove in any way that the plaintiffs purchased any share of the tank in dispute.

4. But there is no dispute before me that what plaintiffs got by their auction purchase was a 6 annas 8 gandas interest in the mauza which prior to the plaintiffs' auction purchased belonged to the three Goswamis, Jagannath, Balaram and Ramkinkar, and that this interest did cover the bandh in suit. The learned Subordinate Judge next states the law, perfectly correctly when he says that:

If the settlement (by some of the Goswamis) was made after the auction purchase, certainly the Goswamis who made the settlement had no right to settle the disputed share with the defendant at the time and the defendant could not acquire any right to the tank under the said settlement.

5. He then refers to Ex. B, the patta granted by Ramsashi Goswami, but ignores the fact that the plaintiffs have not acquired and do not claim Ramsashi's interest in the mauza. He does, however, lay stress on Ramsashi's settlement and says that:

It cannot be supposed why Ramsashi would settle this tank with the defendant.

6. Ramsashi may have had his reasons and was in any case free to do what he liked with his interest. The learned Subordinate Judge proceeds to refer to the fact that Ex. B 1, Jagannath Goswami's patta of 1923 shows that the tank was in the possession of the defendant from before the execution of the patta and that Jagannath afterwards granted the rent receipt (Ex. A). Here the learned Subordinate Judge completely overlooks what has been pointed out by the learned Munsif, viz., that Ex. B-2 the patta executed by Balaram at the same time as Ramsashi's contains the recital that the defendant prayed to the grantor for settlement of the bandh with him and that thereupon the latter took a salami of Rs. 62-8 from him and let out the bandh to him by means of the patta on a rental of Rs. 1. The learned Munsif also points out that according to defendant the rent of the bandh was or had been 8 annas for the share of each of the four sets of co-shares though the patta showed Rs. 1. The learned Munsif has also expressly declined to attach any weight to Ex. A, the rent receipt which

looks quite fresh though, it purports to be about 28 years old. The other receipts also look quite fresh.

7. He points out such important facts as that the rent receipts do not bear any mark in support of the defendant's allegation that they were filed before the survey authorities and that the collection papers of the Goswamis are not produced to support them. All this is completely ignored by the lower Appellate Court. After referring to the rent receipts (though not to their appearance and to the failure of the party concerned to produce collection papers in support of them), the learned Subordinate Judge simply says that in the circumstances he cannot agree with the Munsif in holding that the defendant came into possession of the disputed share of the tank on the strength of the pattas Exs. B to B-2:

Rather, I would hold from the evidence adduced in this case that the defendant

had been in possession of the disputed share of the took after taking settlement of the same verbally from the different co-sharers prior to the auction-purchase of the plaintiffs as alleged by the defendant.

8. This can in no sense be regarded as a proper discussion of the evidence and a finding so arrived at by the final Court of fact is not binding in second appeal. In *Dilan singh v. Choa Singh* 42 Ind. Cas. 397 : 2 P.L.W. 183, which followed *Mobarak Hussain v. Syed Shah Hamid Hussain* 38 Ind. Cas. 509 : 2 P.L.J. 8 : 1 P.L.W. 188 : (1917) Pat. 308, this Court declined to accept as binding a so-called finding of fact, which was not based on a fair, honest and full consideration of the evidence. In *Bankhandi Rai v. Kishori Mandal* 61 Ind. Cas. 102 : 2 P.L.T. 17 : 6 P.L.J. 72 : (1921) Pat. 113, their Lordships again refused to be bound in second appeal by findings of fact when the lower Appellate Court had not considered the oral evidence at all. It is hardly necessary to multiply authorities on the point.

9. The finding of the learned Subordinate Judge in this case as in *Iswar Chandra Bistu Vs. Hariram Bistu and Others*, is not such as can be said to have been properly and legally arrived at. The appeal is allowed, the decree of the lower Appellate Court set aside and a fresh hearing of the appeal directed in accordance with the law. The costs will abide the result.