
(1936) 01 PAT CK 0009
In the Patna High Court

Kamakhya Narain Singh

APPELLANT

Vs

Inderman Ram Sahu and Others

RESPONDENT

Date of Decision : 07-01-1936

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 14, 6

Citation : AIR 1936 Patna 265

Hon'ble Judges : Wort, J;Rowland, J

Bench : Full Bench

Judgement

Wort, J.—The appellant in these cases is the plaintiff who resumed certain land over which a mukarrari lease had been granted for the lives of two persons in the year 1865. The villages, as I have said, were resumed on the death of the latter of the two persons for whose lives the lease had been granted and the plaintiff in this action sought to recover possession of certain holdings in respect of which, according to the defendants, they (the defendants) had occupancy rights. There are two appeals before us, one relating to suit No. 90 and the other to suit No. 91. With regard to suit No. 90 the land in dispute consisted of one plot 1.18 acres in area. Suit No. 91 referred to six plots of land, in area 15 acres, at a jama of Rs. 7-8-0. These 15 acres consisted of three plots of orchard and three plots on which there were tanks. The learned Judge in the Court below has confirmed the decision of the trial Court, holding on the terms of the patta relating to land in suit No. 90, that it was for agricultural purposes; and as regards the land in suit No. 91, he has affirmed the decision of the trial Court on the basis that crops were in fact grown in this land.

2. It is the contention of Mr. Sinha who appears on behalf of the appellant that the settlement of the defendants on the plots in question was not for purposes of cultivation and that therefore the defendants did not acquire occupancy rights-. u/s 6, Chota Nagpur Tenancy Act, "raiya" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself or by members of his family, or by hired servants or with the aid of partners; and the

explanation of that section is:

Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

3. As I understand the argument of Mr. Sinha, he contends, relying on a decision of the Calcutta High Court, that there is a difference between taking settlement of land for the purpose of planting an orchard, which he admits may be held to be cultivation, and taking settlement of a land upon which an orchard already exists: in other words, taking settlement for gathering all the fruit from an existing orchard. In my judgment there can be no such distinction. But in any event in this case it seems to me that, so far as the appeal relating to suit No. 90 is concerned, the matter is disposed of by the decision of the learned Judge in the Court below, who states that the terms of the patta relating to this plot are clearly for agricultural purposes. The patta is not before this Court and we are not called upon to construe its terms and, in its absence, we must rely upon the decision of the Judge in the Court below, that the settlement of this land was for the purposes of cultivation. The matter therefore comes within the explanation u/s 6, Chota Nagpur Tenancy Act, The appeal relating to suit No. 91, involving an area of 15 acres in six plots, is also disposed of for similar reasons. In this case the learned Judge accepting the evidence of the witnesses for the defendant holds that the defendant is carrying on cultivation in the plots the subject matter of the settlement. The fact that a portion of the land is occupied by tanks makes no material difference in the matter.

4. Both the appeals, in my opinion, are disposed of by the findings of the Judge in the Court below. The defendants have occupancy rights and therefore come within the exception of Section 14, Chota Nagpur Tenancy Act. In the circumstances, I would hold that both the tenants are holding for the purposes of cultivation and consequently they have by the settlement in the circumstances obtained occupancy rights and cannot be ejected by the plaintiff. Both appeals fail and must be dismissed with costs.

Rowland, J.

5. I entirely agree. The basis of the suit is the claim to annul u/s 14, Chota Nagpur Tenancy Act, a sub-tenancy created by the holder of a resumable tenure. Section 14 says that such sub-tenancies on the resumption of the tenure shall be deemed to be annulled with certain exceptions. The Courts below have upheld the right of the defendants under exception (b) of Section 14, the Munsif observing that exception (a) in favour of a lease of land "whereupon ... a permanent garden, plantation, tank ... has been made" applies only to cases in which this has been done by the sub-tenant inducted by the lessee whose tenure has been resumed. I do not find any such limitation in the words of the section and in the terms of the exception; but as the plaintiff's suit is concluded by the

findings of the Courts below on the applicability of exception (b) it is not necessary definitely to decide this point.