

(1945) 11 PAT CK 0010
In the Patna High Court

Kamakshya Narain Singh

APPELLANT

Vs

Tara Prasad Bakshi

RESPONDENT

Date of Decision : 14-11-1945

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 14, 20, 20(3)

Citation : AIR 1946 Patna 77

Hon'ble Judges : Sinha, J;Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—In this appeal by the plaintiff the question for consideration is whether the defendant has obtained the right of occupancy in a tank and a bhinda in the following circumstances. On 9th Magh 1922 Sambat, corresponding to 1865 the ancestor of the plaintiff granted a mokarrari istamrari in village Gola to Bakshi Ram Das and Bakshi Loknath Das. It is well settled that such a tenure is resumable upon the death of the grantees. Bakshi Ram Das died several years ago, and Bakshi Loknath Das died in November 1937. The plaintiff's case is that on the death of Lok Nath Das, he resumed the village and came into khas possession of all the lands including the suit lands and that he settled the tank and the bhinda with one Keshar for three years 1994 to 1996 Sambat. But this lessee was disturbed in possession by the defendant and the dispute was carried to the criminal Courts who decided in favour of the defendant. The defendant's case was that during the subsistence of the mokarrari tenure the Chota Nagpur Banking Association in execution of their decree against Loknath Das purchased ten annas and eight pies share in this village in the year 1931, and on 20th April 1934 they sold that share to Ramprakash Lal, a pleader of Hazaribagh. On 2nd Asarh 1992 Sambat Ramprakash Lal by means of a hukumnama settled 5.14 acres of bakasht land, 14 acres of tanr lands and 3.66 acres of bhinda and pokhar (the lands in suit) with the defendant Taraprasad Bakshi on taking a salami of Rs. 400 and at a rental of Rs. 4 per annum. The defendant claims that as he was a settled raiyat in this village, he acquired the right of occupancy in 8.94 acres of land including the tank and the bhinda because he took the

settlement for agricultural purposes.

2. The plaintiff in reply alleges that the purchase from the Chota Nagpur Banking Association was not a purchase by Ramprakash Lal but was a purchase by the defendant's father, Jnardan Das (sic), in the farzi name of his sister's husband, Ramprakash Lal. He also alleged that the settlement was not a bona fide settlement and in any event no right of occupancy, could accrue in the tank and the bhinda so as to deprive him of taking possession on resumption of the village.

3. The Courts below have concurrently found that Ramprakash Lal was the real purchaser and was not a benamidar of the defendant's family. The trial Court also found that this was a bona fide raiyati settlement from the date of the hukumnama although the hukumnama is not available as it has been said to have been lost. As the defendant is found to be a settled raiyat of the village it follows, in the opinion of the Courts below, that he has acquired a right of occupancy. It should be observed here that there is no finding, explicit or implicit, that the settlement was bona fide in the judgment of the appellate Court.

4. Hence the appeal on behalf of the plaintiff. As the whole case turned upon the true, interpretation of the patta (Ex. 1) we had it translated by the office. Some of the relevant portions have been correctly reproduced in the judgment of the learned Munsif. It appears, as I have stated above, that the land which was being settled is of three kinds tanr bakasht land with an area of 5.14 acres, then there is another tanr No. 2 and gairmazrua land measuring .14 acres, and then the bhinda and the pokhar measuring 3.66 acres. There are also two Simar trees, one Bel tree, one Tamarind tree, one Peepal tree and two mango trees apparently on the bhinda which were also included in the settlement. The rental of Rs. 4 per annum is ridiculously low even if the salami of Rs. 400 is taken into consideration, as the total area of the land which has thus been, made available to the defendant is about 9 acres. Again, the settlement was made at a time when Loknath Das was very old. In fact, he died within two years of the hukumnama and within a few months of the registered patta. It is remarkable that the Courts below have not given any consideration to this aspect of the case and confined themselves to the consideration as to whether the purchase by Ramprakash Lal was for himself or was a benami purchase for the defendant. I must hold that the settlement was not a bona fide settlement made by Ramprakash Lal who had purchased ten annas and eight pies of the interest of Loknath Das.

5. On behalf of the respondent strenuous argument was advanced before us that by the application of the provisions of Sections 14 and 20, Chota Nagpur Tenancy Act, the defendant cannot be ousted from the tank and the bhinda. Attention was drawn to Sub-clause (a) to Section 14 which says inter alia that upon the resumption of a resumable tenure no annulment can be made of a lease of land whereon a tank has been made. Assuming that this section applies, there is no finding in the present case that the tank in question was made by Loknath Das. A similar provision is to be found in Exception (i) to Section 37, Land Revenue Sale

Law (Act 11 [XI] of 1859). With regard to the claim of the protection of a lease of land on which a garden has been made, it has been decided in *Bool Chand Jha v. Luthoo Moodee* (75) 23 W.R. 387 that Section 37 does not prevent the auction-purchaser from taking possession of a garden planted on the land as there is no authority for the contention that if a zamindar chooses to plant gardens of mango and other trees upon any portion of his estate he becomes his own raiyat in respect of those plantations and is thus protected under this section. As a contrast see the case in *Gobind Chundra Sen v. Joy Chundra Doss* (86) 12 Cal. 327 which decides that if a garden has been subsequently made on such a land then under the provision of Clause (4) to Section 37 the revenue auction-purchaser cannot recover possession of the garden. As in this case it has not been contended or established on behalf of the defendant that the tank was made upon the land in suit by Loknath Das, the provisions of Section 14. Sub-clause (1)(a) cannot be of any assistance to the defendant.

6. But it was argued that as this was a raiyati settlement made for agricultural purposes, the defendant has acquired an occupancy right by reason of the provisions of Section 20, Sub-clause (3). The question, therefore, arises whether upon a true construction of the patta the settlement of the suit land was a raiyati settlement for purposes of agriculture. In my opinion, the settlement for agricultural purposes must be confined to the two pieces of bakasht lands described as tanr lands with an area of 5.28 acres in all. It is stated at page 2 that the raiyat should remain in possession and occupation of the settled raiyati land, cultivate the same in accordance with his sweet will and appropriate all sorts of produce thereof and that he and his heirs will irrigate the kasht land with the water of the tank. This shows that the settlement was really of the kasht land and a right was given to irrigate the kasht land from the tank--the kasht land is not the subject of the suit. Reliance was, however, placed upon the subsequent terms of the document which are to the effect that the raiyat shall rear fish, etc., in the pond and shall be entitled, to grow all sorts of produce upon the bhinda.

7. It was, therefore, argued that the settlement of the bhind land was for agricultural purposes. Even if this is so, I do not see that the land upon which the tank stood has been settled for agricultural purposes. In this view of the matter, the well-known cases in *Henry Hill and Co. (Turkaulia) Ltd. and Another Vs. Sheoraj Rai and Others*, and *Uma Charan v. Moni Ram* 8 C.W.N. 192, relied upon by the learned advocate for the respondent have no application to the present case. Those cases would have applied if it had been found that the settlement was of the entire area, 8.94 acres, and, therefore, the settlement carried with it the right to catch fish from that part of the land upon which the tank was situated. But here the position is different. The settlement was made only of the kasht land and along with it the right to irrigate the kasht lands from the tank and also the right to catch fish were being given to the defendant.

8. For the aforesaid reasons, firstly that the settlement with the defendant was not a bona fide settlement but was made with a view to deprive the superior

landlord from obtaining khas possession, and, secondly because no occupancy right could accrue in the lands covered by the tank and the bhinda in this case, I must allow the appeal, set aside the decisions of the Courts below, and decree the suit of the plaintiff with costs in all the Courts.

9. I omitted to notice another argument advanced by Mr. T.K. Prasad, who carried on the argument with ability on behalf of the defendant on the next day, that the defendant has been allowed to change the features of the land according to his sweet will by building houses and letting out gardens and orchards on the property given in raiyati settlement.

10. He, therefore, argued that this was a case of settlement of the entire land, and, therefore, the defendant acquired an occupancy right. If the terms of the settlement are interpreted in this way, it strengthens the conclusion that the settlement was not a bona fide settlement. 3.66 acres of land upon which the tank and the bhinda are situated are allowed to be converted into fallow land so that it may either be cultivated or a house may be built upon it or an orchard and a garden may be planted thereon.

11. But I am disposed to take the view that the proper construction of the patta is not that the tank could be annihilated nor that the trees which already stand upon the bhinda are to be cut, but so much of the bhinda land as could reasonably be not kept parti might be brought into use for purposes of cultivation.

Sinha, J.

12. I agree.