
(1936) 02 PAT CK 0005
In the Patna High Court

Kameshwar Singh

APPELLANT

Vs

Mahabir Pasi

RESPONDENT

Date of Decision : 26-02-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153, 193
Limitation Act, 1963 — Article 110

Citation : AIR 1936 Patna 402

Hon'ble Judges : Macpherson, J

Bench : Division Bench

Judgement

Macpherson, J.—These three applications in revision relate to three suits brought under the Bengal Tenancy Act for recovery of the several amounts payable on settlement (by auction) of date and palm trees in April 1930 with three sets of Pasis for the year 1337 P.

2. They were brought on 8th September 1933, which date was within three years of the 30th Bhado (that is the last day) of the year 1337. It was contended on behalf of the landlord that the suits were brought within the period of limitation since even though the payments by the Pasis are not "rent" as defined in the Bengal Tenancy Act, yet u/s 193, Bengal Tenancy Act, the provisions of the Act applicable to suits for recovery of rent are, so far as may be, to apply to suits for recovery of anything payable or deliverable in respect of any rights of pasturage, forest right, rights over fisheries and the like and the contention is that these payments for the date and palm trees are payable in respect of "forest-right" or are something analogous to forest-right covered by the words "and the like." The expression which the plaintiff would use is "phalker." If that contention is sound, then the plaintiff would come under Schedule 3. Article 2, Clause (b) Bengal Tenancy, Act and would be entitled to recover on the date of suit, though, of course, as the claim is not for "rent" the interest could not be at 12? per cent as for rent.

3. The plaintiff adduced evidence that there was an oral contract that the so

called "thika jamas" would be payable on the 30th Bhado 1337, but that claim was not established. The defence was that the suit were barred under Article 110, Limitation Act, and the Munsif accepted and dismissed the suits. The District Judge entertained an application for revision under the proviso to Section 153, Bengal Tenancy Act, but holding that the suits were nothing but ordinary suits for recovery of the settlement money and did not fall under the provisions of Section 193 Bengal Tenancy Act, he rejected the applications in revision.

4. These rules have apparently been issued to consider the question which I have set out. A complication is introduced by the objection raised on behalf of the defendants opposite party, that this Court has no power to act in revision over the District Judge's failure to revise. As at present advised, I am not inclined to hold that this is really an obstacle to the consideration of the question since this Court may in a proper case itself act under its powers of revision. The question itself is, of course, of considerable importance; various recent decisions of this Court which are referred to appear to be in conflict. I may mention *Jhakur Sahu v. Rajkumar Tewari* 1936 Pat 102 and *Moti Singh v. Deoki Singh* 1936 Pat 66 and there may be others. I accordingly refer these applications in revision to a Division Bench. For judgment of Division Bench see p. 403