
(1935) 11 PAT CK 0013
In the Patna High Court

Khublal Singh

APPELLANT

Vs

Ishri Prasad

RESPONDENT

Date of Decision : 28-11-1935

Acts Referred:

Estates Partition Act, 1897 — Section 81, 99

Citation : AIR 1937 Patna 200

Hon'ble Judges : Courtney-Terrell, C.J.;Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—The question in this appeal is whether the plaintiff landlord is entitled to the rent of a holding, consisting of two plots, Nos. 902 and 833, falling in his patti by reason of a Collectorate which came into force from 1335 fasli. It appears that prior to this batwara, the tenant had a cash holding consisting--we are told by Mr. Bose--of 10 plots in the takhta of one set of landlords under a pattidari arrangement among all the landlords, apparently of the nature of an imperfect partition, and that out of these 10 plots the landlords in question dispossessed the tenant from one plot. This plot is referred to as No. 844 in the papers, but it is said at the bar that the correct number of the plot may be No. 944. As a result of the dispossession from this plot, it was held by this Court in a second appeal in 1928 that the tenant was entitled to suspension of rent in respect of all the other plots of that holding, including plot No. 902, one of the two plots with which we are now concerned. The tenant-defendant, who is the appellant before us, resisted the present rent suit on the ground that the batwara among the landlords could not affect his rights, especially the right to hold the balance of his old holding free of rent until the plot from which he has been dispossessed is restored to him. This contention was accepted by the trial Court, but rejected on appeal by the District Judge on the ground that in the circumstances of the case the bar of suspension of rent could not be successfully pleaded against the present plaintiff, though it may be that the landlord or landlords to whose share plot No. 844 has fallen are not entitled to claim any rent from this tenant till the restoration of that plot to him. In second appeal

James, J. sitting singly, upheld this view with a slight modification. He was of opinion that:

The penalty of suspension of rent can be enforced only for so much of the holding as may have fallen within the estate allotted to the high-handed co-sharers, or possibly (though on this point he had doubt) for so much of it as may have been allotted to the same estate as the defendant's plot No. 844 from which he was wrongfully.

2. Mr. Bose, who appears for the tenant appellant, has urged that the batwara being no more than an adjustment of the proprietary interests for revenue purposes, there is no reason why the tenant's right to suspension of rent should at all be affected by it. Section 99, Estates Partition Act, provides for the transfer of patni or other tenures, leases or any other encumbrances created by individual proprietors on their shares or portions thereof to the lands finally allotted to them in partitions made by the Collector, but Mr. Bose has contended that the tenant's dispossession from plot No. 844 cannot properly be regarded as an encumbrance created by the evicting landlords. This contention seems irresistible. Mr. Gendhari Prasad Singh, who appears for the landlord-respondent, has in order to meet it only referred to Section 81 of the Act, which provides that no holding shall be split up for the purposes of a partition under the Act unless it is reasonably necessary to do so in order to effect an equitable partition and that before splitting up a holding the tenant must be notified and his objections heard. But this clearly does not entitle the tenant effectively to insist in the batwara proceedings that his holding shall or shall not be divided in a particular way, nor has Mr. Singh been able to refer us to any provisions in the Estates Partition Act from which it can be gathered that the Collectorate Batwara ought to be regarded as operating to deprive the tenant of his right to suspend payment of rent for the balance of his holding. It is true that the right arose because one set of landlords high-handedly dispossessed him from a portion of the holding, but that does not make it an encumbrance created on the share of those landlords or of a portion thereof. Even if it were to be regarded as an encumbrance, there may, moreover, be no lands to which it could be transferred on the lines laid down in Section 99 of the Act. The view of the District Judge that the penalty of suspension of rent can be enforced only for so much of the holding as may have fallen within the estate allotted to the high-handed co-sharers may possibly work no injustice in some cases; but it is obvious that the tenant will have lost his entire right to suspension of rent if those co-sharers contrive to have the whole holding allotted to other co-sharers.

3. The alternative to which James, J. referred, though not without some hesitation, namely that the penalty of suspension of rent can be enforced for so much of the holding as may have been allotted to the same estate as the plot from which the tenant-defendant was wrongfully dispossessed, is liable to a similar criticism. It is by no means inconceivable in cases of this kind that no other plot out of the old holding may be assigned to the landlord to whom the

plot in question is allotted. It seems to me that the correct way of approaching the matter was indicated, by an observation that fell from my Lord the Chief Justice during the course of the argument. Prior to the batwara it was by an arrangement among the landlords that the holding fell within the takhta of the high-handed cosharers. These co-sharers thus represented the entire body of landlords in one sense, and the dispossession of the tenant from a part of his holding has, by reason of its conversion into bakasht and its treatment as such at the batwara, benefited all the landlords. A rent suit on the basis of the batwara is thus a matter between an innocent tenant and a landlord who has benefited from the high handed action of a co-sharer. It would, therefore, not be unfair if the bar of suspension of rent were to continue to apply to all the plots of the tenant's old holding, in which ever pattis they may have fallen as a result of the batwara. It is true that this may operate unequally between the various landlords, but if it does do so, the landlords themselves are to blame for it. We know in the present case that the claim to suspension of rent was advanced before the batwara allotment, and it has now been ascertained that the order of the High Court allowing the suspension came after the actual partition. The landlords thus took their allotments subject to the result of the second appeal pending in the High Court, and it does not seem at all unfair in the circumstances that the tenant, having done nothing to lose his right to suspension of rent, should, in the present rent suit, pay rent for that part only of the present holding which did not form part of the old holding in respect of which he was entitled to suspension. James, J. observed that the difficulty of enforcing against the plaintiff the penalty of suspension of rent on account of dispossession was increased by the fact that there was nothing on the record to indicate the rents chargeable for the two plots in suit; but this difficulty has now been overcome by means of inquiries made by the parties.

4. I would accordingly allow this appeal and modify the decree in favour of the landlords by confining it to the rent of plot No. 833 only. We know from Mr. Gendhari Prasad Singh that the plot was assessed in the batwara proceedings at Rs. 2-14-6 besides cess; and there is no dispute before us that there is no reason why the tenant-appellant should not pay rent for this plot. The appeal succeeds in respect of the rent of plot No. 902 only. I would allow the tenant-appellant proportionate costs in all the Courts, and direct the decree of the lower Court to be corrected accordingly.

Courtney-Terrell, C.J.

5. I entirely agree.