
(1934) 12 PAT CK 0003
In the Patna High Court
Case No : Appeal No. 809 of 1933

Khublal Singh

APPELLANT

Vs

Ishri Prasad

RESPONDENT

Date of Decision : 05-12-1934

Acts Referred:

Citation : (1934) 12 PAT CK 0003

Final Decision : Dismissed

Judgement

James, J.—This is a second appeal from the decision of the District Judge of Saran decreeing the plaintiff's suit for arrears of rent. It appears that the defendant possessed as settled raiyat certain land contained in more than one holding in mauza Somuar. The holdings were more than one because there had been a pattidari arrangement among the landlords, which we must presume to have been of the nature of an imperfect partition, since a formal partition involving (sic) union of land among the proprietors has been recently made under the Estates Partition Act. One of these buildings is said to Wave consisted of name plots (the exact number of plots is immaterial) for which the defendant paid rent to Daroga Singh and two other pattidars. At the time of the provisional survey it was found that Daroga Singh had forcibly ejected the defendant from one of the plots of holding (plot No. 844 of the provisional survey and a note to that effect was made in the Record-of-rights.

2. In 1923 Daroga Singh and his two, fellow pattidars sued the defendant for rent. The defendant took the objection that he had been evicted from a portion of his fielding, and remission of rent for that portion had been allowed to him. When the case came up to the High Court in second appeal, Das, J., by his order of 16th February 1928, applied the rule of suspension of rent. He remarked as a rider to his judgment, that until the land from which the defendant had been evicted was restored to him, the landlords would be entitled to no rent for the holding.

3. After this there was a complete partition of the estate, made by the Collector.

The holding which "had been the subject-matter of the suit which, had terminated with the decree of the High Court in 1928 was sub-divided under S. 81, Estates Partition Act. One plot out of that holding was allotted to the plaintiff of this action together with another plot appertaining to some other holding of the defendant and the suit out of which this appeal arises was instituted for recovery of arrears of rent for the holding thus created. The Munsif of Siwan dismissed the suit considering that the suspension of rent enforced by the High Court in 1923 must be held to be still continuing. His decision was reversed on appeal by the District Judge who held that the order directing suspension of rent of the holding under Daroga Singh could not be treated as applying to the new holding under the plaintiff created by the partition proceedings.

4. Mr. S.S. Bose on behalf of the defendant-appellant argues that the order suspending rent in 1928 must be held to apply to all the plots of this holding whatever may have happened to them in partition. He suggests that the rent may have been unfairly apportioned under S. 81, Estates Partition Act in the partition proceedings but in the Court of the learned Munsif the defendant did not dispute the correctness of the rent assessed and it does not appear that there are any materials on the record from which it can be argued that the apportionment of rent made under S. 81, Estates Partition Act, was other than, correct. I have always regarded with some misgiving the practical effect of S. 99, Estates Partition Act, by which a single co-sharer or group of co-sharers can evade their liabilities by exchanging with other co-sharers in a partition proceeding plots which have been leased to raiyats Mahadeo Prasad Singh v. Jagannath Prasad, 1931 Pat 173 = 150 IC 34 = 13 Pat 303, but it would appear that if Daroga Singh contrived in the partition to transfer any of the plots of the defendant's holding to another co-sharer, the bar to recovery of rent for that particular plot would be thereby removed. Daroga Singh by his own high-handed action had placed a bar in the way of his own realization of rent in respect of right plots until the wrong done to the defendant was remedied; but that bar like any other encumbrance would attach to the particular plot no longer after it had been transferred to another co-sharer. In the present case the difficulty of enforcing against the plaintiff the penalty of suspension of rent which was imposed on Daroga Singh has been increased by the fact that we have nothing on this record to indicate what amount of the rent payable by the defendant is payable for the plot which was formerly part of the holding under Daroga Singh, and what is payable for the other plot; and certainly the present plaintiff could not on account of Daroga Singh's action be held liable to have his rent suspended for land which formed no part of the holding under Daroga Singh. The tenant should have objected at the time of partition, when he should have insisted that his original holding under Daroga Singh should be allotted to Daroga Singh's estate; but I consider that the view of the learned District Judge is correct, 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 I have 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 dispossessed.

5. The present suit was rightly decreed by the District Judge and this appeal must be dismissed with costs.