

(1934) 12 PAT CK 0002

In the Patna High Court

Case No : Second Appeals Nos. 1380 and 1381 of 1932

Kishori Lal Sinha and others

APPELLANT

Vs

Sant Pratap Singh and another

RESPONDENT

Date of Decision : 06-12-1934

Acts Referred:

Citation : (1934) 12 PAT CK 0002

Final Decision : Dismissed

Judgement

James, J.—These are two second appeals from the decree of the Subordinate Judge of Patna enhancing the appellants' rent under S. 32, Ben. Ten. Act. In appeal No. 1380 the rent has been enhanced by two annas in the rupee, and in appeal No. 1381 by three annas. In appeal No. 1380 a portion of the tenant's holding amounting to nearly one-sixth of the whole, has become sandy and has thus deteriorated; and for both cases the finding of the lower appellate Court is that irrigation works have not been well maintained, though not so badly as to warrant refusal of the prayer for enhancement of rent. The lower appellate Court has mentioned the prevailing economic depression, but has given no effect under S. 35 to his consideration of it. Whatever we may regard as the basic principles underlying S. 32, Ben. Ten. Act, whether or not it is to be regarded as a means of preserving in a more or less constant condition the landlord's share of the produce, it is manifest that the application of the rules should be neither fair nor equitable in present conditions, when applied to any rent which does not leave a considerable margin of profit for the raiyat. In the present case existing rents were high on the standards of the earlier of the decennial periods taken by the Courts below for purposes of comparison and it is impossible, when we are applying the rule laid down in S. 35, Ben. Ten. Act, and, in doing it scrutinizing the lists prepared under S. 39, to ignore the story which these lists tell of the conditions under which the enhanced rents would have to be paid. Ever since the last year of the second decennial period taken in the present case, prevailing prices have been as low as the lowest in the first decennial period. We should on the strict application of the rules be requiring the raiyat to pay more rent,

because he may have realised profit from higher prices, ten years before the suit and fourteen years ago; although the prices which have been prevailing from the date of the suit are less than half of the prices on which the rent is to be assessed; so that the raiyat, faced with conditions in which payment of his existing rent will be difficult, is to be required to pay more. Civil Courts are saved from, the necessity of applying the law in this absurd fashion, by the provisions of S. 35, Ben. Ten. Act, which provide that no enhancement shall be allowed if it is not fair and equitable. This provision must be treated as affording a safeguard against such results as would follow from applying in present conditions the street provisions of S. 32, merely because the prices between 1920-1929 happen to have been very high. I consider that no enhancement should be allowed in these cases and I allow both these appeals.

2. The decrees of the lower appellate Court will be set aside and the suits will be dismissed. Each party may bear his own costs throughout.