

(1933) 08 PAT CK 0030
In the Patna High Court

Krishna Mahto and Others

APPELLANT

Vs

Ramananda Bhakat

RESPONDENT

Date of Decision : 02-08-1933

Acts Referred:

Citation : AIR 1933 Patna 635

Hon'ble Judges : Macpherson, J;Agarwala, J

Bench : Full Bench

Judgement

Macpherson, J.—This second appeal is preferred by the plaintiffs in a suit for ejectment of the defendant on the ground that though served with a notice to quit plot 1456 of plaintiff's holding he has failed to do so and is a trespasser thereon. The defence is that the father of the defendant in 1911 took settlement at a salami of Rs. 20 of a plot of danga or upland in the holding of the plaintiffs and within the next two years had converted it at a cost of Rs. 100 into ariat which is a species of korkar and covered by the definition of that term contained in the Chota Nagpur Tenancy Act, he was entered in the Record of Rights as having a right of occupancy in the ariat plot and it is also set out in the Record of Rights that he had converted the plot into ariat. It is further alleged on behalf of the defendant that he inherited the occupancy right of his father and that the plaintiffs had actually acknowledged his right by receipt of rent from him.

2. Both Courts found that the appellants held an occupancy right in the land and could not be ejected. On behalf of the plaintiffs-appellants it is urged by Mr. Sinha that the decision of the lower appellate Court is inadequate and there ought to be a remand. It was found by the lower appellate Court in agreement with the Munsif that the facts were as stated by the defendant and that the plot was the korkar of defendant's father who had a right of occupancy therein though an under-raiyat. The lower appellate Court proceeded:

Accordingly as occupancy right is heritable, defendant has also acquired the said occupancy right in the under-raiyati holding and is not a trespasser.

It is urged on the authority of the decisions of the Calcutta High Court in *Iswar Sant and Others Vs. Torendra Nath Kuila*, and *Sudhanya Kumar Dass Vs. Saik Ismail*, that the occupancy right of an under-raiyat is not perse heritable.

3. It is not necessary for us however to enter into a discussion of this question as regards under-raiyats in Chota Nagpur under the Chota Nagpur Tenancy Act, 1908. It is sufficient to say that the evidence on the record which we have perused with care leaves no room for doubt that there is a custom or usage prevalent in the village in question whereby an under-raiyat has invariably an occupancy right which is heritable at least in respect of land in his tenancy which is his rokar. Such a custom can occasion no surprise since no cultivator in the jungle areas of Chota Nagpur would convert land into korkar unless he had the inducement of a permanent heritable tenancy therein.

4. The Act does not expressly acknowledge the occupancy right of a korkardar under-raiyat, but that was doubtless because the custom is so universal that it must have been supposed that he could never fail to prove it in the unlikely event of his being called upon to do so. As a precaution of safety however it might well be included in the Act when it is next taken up for amendment. As to the present case it is clear that even the plaintiffs themselves were among those who acknowledged this custom to the under-raiyat whom they now seek to eject.

5. In my opinion the defendant-respondent has inherited the occupancy right held by the under-raiyat, his father, in accordance with the custom of the village in which the land is situated and this is a complete answer to the suit for ejectment. It is not necessary to discuss the claim that defendant was also acknowledged as having a right of occupancy. I would therefore dismiss this appeal with costs.

Agarwala, J.

6. I agree.