
(1934) 11 PAT CK 0011

In the Patna High Court

Case No : Appeal Nos. 569 of 1932 and 1291 of 1933

Kuman Das

APPELLANT

Vs

Kameshwar Singh Bahadur

RESPONDENT

Date of Decision : 16-11-1934

Acts Referred:

Citation : (1934) 11 PAT CK 0011

Final Decision : Allowed

Judgement

James, J.—These are two second appeals from decisions of the Court of the District Judge of Purnea. Kuman Das held a mukarrai tenure at an annual rental of Rs. 260-13-1 under the Maharaja of Darbhanga. In 1860 his predecessor in interest had granted a darmukarrari tenure to Mt. Muna Kuer at an annual rental of Rs. 450, with the stipulation that the darmukarraridar should pay the mukarrai rents to the Maharaja of Darbhanga and should pay the balance of Rs. 189-2-1 to the mukarraridar. This darmukarrari tenure was purchased in 1870 by, Mukti Nath Thakur; but at some time after 1905 the Maharaja of Darbhanga acquired a four annas share in the darmukarrari tenure in execution of a decree. Thus the position now is that Brij Behari Das, who has now succeeded his father Kuman Das, is a permanent tenureholder under the Darbhanga estate to which he is liable to pay annually Rs. 260 but the Maharaja of Darbhanga and Mukti Nath are jointly mukarraridars under Kuman Das with an obligation to pay the mukarrari rent to the Maharaja and Rs. 189 annually to Brij Bihari Das. There had been previous litigation in which Kuman Das obtained decrees jointly against Mukti Nath Thakur and the Maharaja of Darbhanga for the sum of Rs. 189-2-1 due under the darmukarrari covenant. The suits with which we are here concerned were instituted by the Maharaja against Kuman Das for arrears of the mukarrari rent. The defence taken in each instance by Kuman Das was that as darmukarraridar the Maharaja was jointly and severally liable to pay this rent and was therefore not entitled to sue Kuman Das for it. The suit of 1929 was dismissed by the Subordinate Judge; but on appeal the Additional District Judge of Purnea granted a decree for three-quarters of the rent claimed in the suit of

1933 the Subordinate Judge dismissed the suit for rent; but gave a decree for cess calculated on the net profit of the mukarraridar. The District Judge on appeal, gave a decree for rent, allowing to the defendant a deduction of Rs. 112-8-0 per annum, being a quarter of the sum of Rs. 450 payable as darmukarrari rent. The defendant has come up in second appeal from each of these decisions of the District Judge and the two appeals have been heard together.

2. Mr. Manuk on behalf of the defendant-appellant argues that the Maharaja of Darbhanga is jointly liable with Mukti Nath Thakur to pay the whole of the mukarrari rent of Rupees 260 and that having entered into this obligation, he cannot institute a suit to compel the mukarraridar to perform that which he himself had undertaken to do. In the previous suits instituted by the mukarraridar against Mukti Nath Thakur and the Maharaja of Darbhanga, the defence was taken on behalf of the Maharaja that he was not jointly liable with Mukti Nath Thakur for the whole of the rent of the darmukarrari tenure; but that he was liable only for a quarter of it. In rent suit No. 32 of 1907 this point was decided by the Subordinate Judge in favour of Kuman Das. The Subordinate Judge there definitely found that both the defendants, Mukti Nath Thakur and the Maharaja of Darbhanga were jointly liable for the arrears under the terms of the original kabuliat.

3. Sir Sultan Ahmed argues that the Maharaja may be jointly liable with Mukti Nath Thakur under the darmukarrari kabuliat; but that he cannot be regarded as severally liable, that is to say, in a suit for rent instituted by the Maharaja it cannot be argued that the Maharaja has personally undertaken to pay the rent of Rs. 260 which he claims for Kuman Das.

4. The original darmukarraridar undertook by her kabuliat to pay the whole of the mukarrari rent to the superior landlord. The tenure which was at that time created was a permanent and transferable tenure; but the person who purchased the tenure purchased with it the liabilities which the original tenureholder undertook by her kabuliat; that is to say, Mukti Nath Thakur acquiring the undertenure incurred also the liability undertaken by the original tenureholder. When the Maharaja of Darbhanga acquired a quarter share in this tenure, he became jointly liable with Mukti Nath Thakur to carry out the terms of the kabuliat. The learned District Judge in his judgment of 7th March 1932 says that because Mukti Nath Thakur and the Maharaja of Darbhanga in the suit of 1907 (Ex. C) asserted that their liability was separate therefore although the Court held that they were jointly liable, the two darmukarraridars having made that allegation are in some way or other bound by it, as if they were not bound by the finding of the Subordinate Judge in that suit. But the finding in that suit definitely was that the two under tenure holders were jointly liable; and indeed no distribution of the rent of the under tenure could be made except with the written consent of the landlord Kuman Das, in view of the provisions of S. 88, Ben. Ten. Act. This joint liability places both the Maharaja of Darbhanga and

Mukti Nath Thakur in the position of co-promisors; and under S. 43 Contract Act, Kuman Das was entitled to require either of the two co-promisors to carry out the whole of the contract. Sir Sultan Ahmed suggests that the joint liability of tenants generally in Bengal and Behar does not imply separate liability on the part of each to pay the whole of the rent when sued by the landlord, relying on the decision in Kasi Kinker Sen v. Satyendra Nath, (1910) 7 IC 840. The rule laid down in Kasi Kinker Sen v. Satyendra Nath, (1910) 7 IC 840 is at variance with that laid down in Beradar Singh v. Raghunandan Mahto, 1020 Pat 204 = 54 IC 39 and the decision of this Court in Raghunandan Das v. Baleshwar Prasad, 1927 Pat 426 = 105 IC 484, expressly dissents from the decision in Kasi Kinker Sen v. Satyendra Nath, Kasi Kinker Sen v. Satyendra Nath, (1910) 7 IC 840 and it certainly cannot be said that there is any rule in this province that each of several cotenants is not separately liable for the whole of the rent. Thus in these suits the plaintiff himself is under contract with the defendant to pay the whole of the rent which he claimed, and the defendant is entitled to plead this contract by way of defence to a suit for rent. The plea is not a plea of set off; it is a plea that the plaintiff himself is liable to fulfil the obligation which he is seeking to cast on the defendant; and that in such circumstances he is not entitled to invoke the aid of the Court to compel the defendant to do what he himself is bound to do.

5. The decision of the Subordinate Judge of 29th July 1932 (second appeal No. 1291) was correct. The liability of the son of Kuman Das towards the plaintiff in these suits is limited to the payment of cess on his net profit.

6. I would therefore allow each of these appeals. In each of the appeals the decree of the lower appellate Court is set aside; in appeal No. 1291 the decree of the Subordinate Judge is restored in appeal No. 569 a decree will be prepared similar to that of Maulavi Abul Barkat of 29th July 1932. The defendant-appellant is entitled to his costs throughout.

Macpherson, J.

7. I agree.