
(1928) 05 PAT CK 0011
In the Patna High Court

Lachman Mahton

APPELLANT

Vs

Lalu Mahton and Others

RESPONDENT

Date of Decision : 09-05-1928

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 139, 139(6)

Citation : AIR 1928 Patna 515

Hon'ble Judges : Macpherson, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Macpherson, J.—The appellant Lachman Mahton instituted a suit in the Court of the Munsif of Hazaribagh_ for a declaration that he has pradhani right to mauza Sonhar and for possession by dispossessing defendants 1 to 4 who have no such right and for mesne profits in respect of 1979--81 Sambat. These defendants contended that the suit lay in the revenue Court, but the Munsif negated the contention and decreed a moiety of the reliefs claimed. He held that the plaintiff was entitled to hold half the pradhani tenancy while the remainder appertained to the defendants mentioned whose interest therein inter so he did not determine. Plaintiff appealed and the learned Judicial Commissioner was of opinion that if the civil Court had jurisdiction the plaintiff was entitled to have his suit decreed in full, but he held that u/s 139(6), Chota Nagpur Tenancy Act, as amended the suit was properly cognizable by the revenue Court and he directed the plaint to be returned for presentation to that Court. The plaintiff now contests this order in second appeal.

2. The parties who are Telis are descendants of Jhandu who was succeeded as pradhan by Magan, the eldest of his three sons. Magan was succeeded by Khetu the eldest of his five sons. Khetu left no sons. Plaintiff is the son of Chetu, second son of Magan. Defendants 1 to 4 are sons of Heru, fourth son of Magan. Heru is entered in the Record of Rights as pradhan. Plaintiff contends that the entry is wrong, that Chetu succeeded Khetu and he by the rule of primogeniture succeeded his father Chetu, while Heru only transcribed the business of the

village as manager of his two eldest brothers successively. The defence is that Heru succeeded Khetu and his sons succeeded him.

3. Section 139 of the unamended Act directed that the following among other suits shall be cognizable by the Deputy Commissioner and shall be instituted and tried and heard under the provisions of this Act and shall not be cognizable by any other Court except as otherwise provided in the Act:

All suits by or against headman of villages for a declaration of title in or possession of their office or agricultural land whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant.

4. This provision was considered in *Tata Iron and Steel Works v. Raghunath Mahto* [1918] P.H.C.C. 65. It was there held that the Deputy Commissioner had no jurisdiction to try a suit brought by the landlord to eject the pradhan of a village in his estate. But the provision was construed as empowering the Deputy Commissioner to hear suits between the pradhan on the one hand and rival claimants on the other with regard to the right to hold the office coupled with the possession of the lands attached thereto. The decision was pronounced in 1918 and in the amending Act of 1920 Sub-section (6) appears in the following form:

Subject to the provisions of Sub-section 5, Section 74(A) all suits by or against a village headman for a declaration of title in, possession of, ejectment from or recovery of his office or land comprised in his village headman's tenancy, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant and whether brought or not by or against the landlord of such land.

5. It is manifest that this provision evinces the intention of the legislature to place it beyond any possibility of doubt that save in the case excepted the forum for all suits by or against a village headman in respect of his title in and possession of his office or land comprised in his village headman's tenancy shall be the revenue Court. It is indeed difficult to conceive of any suit in respect of the matters mentioned which could be so framed as to outwit this insistent provision. It was obviously the intention *inter alia* to expand the original Sub-section (6) so as to give the Deputy Commissioner the jurisdiction denied to him in the decision cited to try a suit between the landlord and the pradhan while retaining in the Deputy Commissioner all the jurisdiction which he possessed under the unamended sub-section. And as was also held in the decision cited, the Deputy Commissioner indisputably already possessed sole jurisdiction in a suit between rival claimants to the village headman's office and tenancy. Unless therefore the appellant can show that he comes under the provisions of Section 74-A (5) the decision under appeal is transparently correct.

6. Now, Section 74-A (5) allows a title suit in the civil Court in very restricted circumstances. Section 74-A was introduced by the amending Act of 1920. It is a special provision dealing with the determination by the Deputy Commissioner of

the person who in certain circumstances should in accordance with custom be village headman entitled to hold the village headman's tenancy. The circumstances are that the tenancy which in accordance with the custom is held by a village headman, has for any reason been vacated (such reason may be inter alia the death of or abandonment by or ejection, legal or illegal, of the previous village headman) and under Sub-section (1) three or more tenants holding lands within the tenancy or the landlord may apply to the Deputy Commissioner whereupon under Sub-section (3) the Deputy Commissioner shall inquire who in accordance with the custom should be village-headman entitled to hold the tenancy and place him in possession if he is not already in possession.

7. Sub- Section 5 deals only with such a case where the application u/s (1) is pending or where the Deputy Commissioner has determined the matter under Sub-section (3) in which events it bars every other suit and application concerning the matter except a title suit in the civil Court instituted within one year of the date of the Deputy Commissioner's order under Sub-section (2) to establish the right of the plaintiff to succeed to the tenancy. On the other hand the last sub-section of Section 74-A lays down that when a matter is substantially in issue or has been substantially in issue and has been determined in a suit u/s 139(6) no application shall lie u/s 74-A (1). It is clear that it was open to appellant to bring a suit but that u/s 139(6) it lay exclusively in the revenue Court and Section 74-A (5) has no application.

8. This appeal is accordingly without merits and I would dismiss it with costs.

Kulwant Sahay, J.

9. I agree.