

(1925) 06 PAT CK 0033
In the Patna High Court

Lachman Sahay and Others

APPELLANT

Vs

Gauri Charan Mahton and Others

RESPONDENT

Date of Decision : 24-06-1925

Acts Referred:

Citation : AIR 1926 Patna 423

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Das, J.—There is a deficit Court-fee of Rs. 80-4-0 due from the plaintiffs-respondents on their plaint and on their memorandum of appeal in the Court below. They are given seven days time to make good the deficiency; if they fail to do so their suit in the Court of first instance will stand dismissed and the appeal in this Court will stand decreed with costs in all the Courts.

2. I now proceed to deal with the case on the understanding that the deficiency will be made good. The plaintiffs, who are respondents before us, sued the appellants, the defendants first party, for a declaration that the decree passed on the 30th of March, 1920 in Rent Suit No. 1964 of 1919 and the auction sale held on the 15th of November 1920 in execution case No. 861 of 1920 are irregular, against the provisions of law and fraudulent and are fit to be set aside and rendered null and void.

3. The facts are these. The defendants second party had a holding of 5 bighas of kasht land under the defendants first party. They transferred the entire holding to the plaintiffs. Thereafter the landlords brought a rent suit as against the defendants second party, obtained a decree against them, proceeded to execute the decree, and in due course purchased the holding at a sale held in execution of their decree.

4. The plaintiffs contend that there is a custom of transferability of occupancy holdings in the village and that the decree obtained by the landlords against the defendants second party is fraudulent and not binding upon them. The Court of

first instance found that there was no custom of transferability of occupancy holdings in the village. The learned Judge in the Court below has not gone into that question, but he has come to the conclusion that, assuming that the decision of the Court of first instance on this point is right, the plaintiffs are still entitled to succeed on the ground that the decree obtained by the landlords as against the defendants second party was fraudulent. In my opinion the decision of the learned Subordinate Judge cannot be supported. If there is no custom of transferability of occupancy holdings in the village, the plaintiffs have no cause of action and their suit should be dismissed on that ground. The learned Subordinate Judge was under the impression that the landlords had to bring a suit for ejectment as against the purchaser, In my opinion this is not right. The landlords may, if they choose ignore the sale and proceed to bring a rent suit as against their tenants. This is the course which they adopted; and they are undoubtedly entitled to succeed unless it be established that there is a custom of transferability of occupancy holdings in the village.

5. I must set aside the judgment and the decree passed by the Court below and remand the case to that Court for disposal of the question as to the custom of transferability of occupancy holdings in the village. This judgment will not be signed by us until the 30th of this month. Costs will abide the result and will be disposed of by the lower appellate Court,

Ross, J.

6. I agree.