
(1947) 12 PAT CK 0006
In the Patna High Court

Lal Narain Singh and Others

APPELLANT

Vs

Mohamed Anzar Hussain and Others

RESPONDENT

Date of Decision : 23-12-1947

Acts Referred:

Bihar Tenancy Act, 1885 — Section 121, 22(2)

Citation : AIR 1949 Patna 367

Hon'ble Judges : Mukharji, J; Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.

. 1. This appeal by the plaintiffs raises again the troublesome question of the applicability of Section 22(2), Bihar Tenancy Act.

2. The facts are these. The appellants instituted a suit for recovery of their share of bhaoli rent from defendants 1 to 3 for the period 1348 and 1349 Fasli with respect to the lands appertaining to khata Nos. 4 and 5 in village Rupanchak Sesari, bearing Tauzi No. 4548. The plaintiffs, admittedly, are the 1/14/6 co-sharer landlords in this village. The remaining -/1/6 share was held as mukarrari by Mt. Zafuran and Mt. Matulan, who were also in possession of the suit lands u/s 22(2), Bihar Tenancy Act. These two ladies transferred their mukarrari interest in the Tauzi to Mt. Imaman and Ezaque Khan so that the transferees became liable to pay the share of the rent of the land in suit u/s 22(2) to the plaintiffs and the other 130-sharers. In the year 1936, the lands in suit were transferred by Mt. Imaman and Razaque to defendant 5 as the gumashta of defendants 1 to 3. In the Courts below, the plaintiffs' allegation was that defendant 5 was a farzidar on behalf of defendants 1 to 3, but the concurrent findings of both the Courts are that defendant 5 was an independent purchaser.

3. After the sale deed in favour of defendant 5 the father of defendants 1 to 3 took a sale deed of the mukarrari interest from Mt. Imaman and Razaque. The father of defendants 1 to 3 is now dead.

4. The plaintiffs sued defendants 1 to 3 relying on the provisions of Section 22(2), Bihar Tenancy Act, alleging that these persons were liable to pay to the plaintiffs their share of the bhaoli rental of the holding for the years in suit. The defence of the defendants was that they are not in possession of the lands in suit and that the plaintiffs were entitled to rent from defendant 5 only.

4a. The trial Court came to the conclusion that the suit lands were the bakasht of Mt. Imaman and Mt. Batulan who were co-sharer mukarraridars, that defendant s by reason of the kebala did not acquire any right in the suit lands as Mt. Imaman and Razaque could not have legally conveyed any right in the suit land to defendant 5, and professing to rely upon Miss G.B. Solano and Others Vs. Maharaja Kumari Umeshwari Koer, , he thought that the plaintiffs were entitled to recover rent of the suit lands from defendants 1 to 3 and not from defendant 5.

5. Defendants 1 to 3 appealed to the Subordinate Judge of Gay a who reversed the decision of the learned Munsif and held that, although Khata 4 and 5 were originally bakasht lands, by the subsequent conduct of the 16-annas proprietors defendant 5 has acquired raiyati interest therein and is now a fullfledged tenant of all the 16 annas landlords. In this view he set aside the decision of the Munsif and dismissed the suit against defendants 1 to 3 but decreed it against defendant 5.

5a. This second appeal is brought by the plaintiffs who seek to restore the decision of the Munsif. There is no appeal or cross-appeal by defendant 5.

6. It is well to dispose of the question of recognition first. I do not agree with the Subordinate Judge that upon the facts found in this case, it can be held that defendant 5 was recognized as a raiyat by the plaintiffs. The only evidence in support of the so-called recognition is the institution of restraint (distrain?) proceedings u/s 121, Bihar Tenancy Act by the plaintiffs, but those proceedings were withdrawn. The plaintiffs' case is that those proceedings were instituted in ignorance of law. It has not been shown that defendants' position has been altered by reason of the institution of those proceedings and, therefore, the mere institution of those proceedings cannot be held in law to amount to any recognition.

7. Defendant 5 was not inducted on the land as a tenant by the then co-sharer landlords who, as I have already stated, sold the suit lands to him by a kebala. The provisions of Section 22(2), Bihar Tenancy Act, would have been helpful to defendant 5 if the then co-sharers had sublet the suit lands to him.

8. What then is the position of defendant 5? In my opinion, the learned Subordinate Judge rightly came to the conclusion that defendant 5 was a trespasser, and for this reason: It is well-settled by authorities that a co-sharer landlord who purchases an occupancy holding is not a raiyat. He acquires a peculiar status and his only right is to retain possession of the land on payment of the share of rent which was payable for the land to his co. sharer landlords. He cannot sever the two interests and sell his right to hold the land apart from

his interest as a co. sharer landlord of the holding. The two interests are souldered together and cannot be severed." As an analogy, I may refer to the decision of the Privy Council in (1925) 48 MLJ 667 (Privy Council) . In that case Mt. Maina Bibi, who was in possession of the estate of her husband in lieu of her right to recover dower debt, purported to assign both her debt and her right to hold possession of her husband's estate until the debt was paid off. Their Lordships remarked that it was doubtful whether she could have done either of these two things, but it was clear that, in fact, she did not purport or attempt to do either of them, because in those deeds of transfer she described herself as the absolute owner of the property of her deceased husband and purported to convey an absolute ownership of her donees, and then made this important observation:

There is no ground for the contention, if it had been really put forward, that because these deeds failed to effect a transfer of the absolute interest, with which they purported to deal, they operate to transfer the widow's dower debt and her right to hold possession of the lands till that debt is paid. By giving up possession of the lands, as in her deeds she alleges she has done, she has undoubtedly lost her right to hold possession of them.

The position in the present case is somewhat similar. The sale deed in favour of defendant 5 fails to take effect as a transfer of any interest in the holding in suit and it cannot be held that the sale deed will operate to transfer any occupancy right. The observations of the Privy Council also support me in the conclusion that by giving up possession of the suit lands as in the -sale deed, the co-sharer landlords lost any right to hold possession of the suit lands.

9. The suit was, therefore, misconceived, but as defendant 5 has not appealed against the decree of the Court below, that decree cannot be disturbed.

10. The appeal must, therefore, be dismissed but it will be held that defendant S is not a raiyat under the plaintiffs.

11. The Subordinate Judge has given a finding that defendants 1 to 3 have recognized defendant 5 as a raiyat, but the defendants not being in possession, had no right to sublet the land and indeed they have not done so. The recognition by these defendants of defendant 5 to hold the land as a raiyat will operate only to this extent that the plaintiffs, when they seek to recover possession, will be entitled to joint possession with defendant 5 to the extent of their Joint interest.

12. With these remarks the appeal is dismissed, but in the circumstances without costs.

Mukharji J.

I agree.