
(1925) 05 PAT CK 0038

In the Patna High Court

Lala Bambahadur Lal and Others

APPELLANT

Vs

Mt. Gungta Kuer

RESPONDENT

Date of Decision : 22-05-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 22(2)

Citation : AIR 1925 Patna 547

Hon'ble Judges : Ross, J

Bench : Division Bench

Judgement

[After stating facts as set out above the judgment proceeded:--]

1. The principal point for consideration in the present case is as to what was the status of the plaintiff in respect of the land in dispute. This depends on a construction of Section 22(2) of the Bengal Tenancy Act. The learned Subordinate Judge has relied upon the decision of this Court in Rai Bahadur Bisseswar Lal Halubasia and Others Vs. Rup Kishore Chaubay and Others, , Nand Kishore Singh v. Chander Dip Singh A.I.R.1922 Pat. 193, Emamuddin v. Saiyid Rashidul Haq (1919) 4 P.L.J. 540. On the other hand reliance has been placed on behalf on the appellants upon the cases of the Midnapur Zamindari Company, Limited v. Naresh Narayan Rai AIR 1924 P.C. 144 , Roshan Ali and Another Vs. Chandra Mohan Das, , Stonewigg v. Dwarka Singh (1918) 4 P.L.W. 428 , Basudeo Narain Vs. Radha Kishun and Dabindra Missir and Others, , Raja Ram Sahu v. Jhanti Gope (1916) 34 I.C. 75. In my opinion the status of a co-sharer landlord purchasing an occupancy holding is not the status of a raiyat but a peculiar status created by Section 22(2). His right is that of a proprietor entitled to retain possession of the land subject to payment to his co-proprietors their shares of the rent. It is not the status of a raiyat inasmuch as if he sub-lets to a third person such third person is deemed to be a raiyat in respect of the land and ordinarily a raiyat sub-letting to a third person does not confer a raiyati but an under-raiyati interest. Therefore the status created is a peculiar status which attaches to the co-sharer so long as he remains a co-sharer. In my opinion if he

ceases to be co-sharer and his proprietary interest is lost he has no right to retain possession of the land and it would pass on to the person who would acquire the interest of that co-sharer. In *Ram Prasad v. Munshi Gopal Chand* (1) there was a partition amongst the co-sharers and by that partition the land purchased by one co-sharer was allotted to another co-sharer and it was held that the co-sharer who had purchased the holding was entitled to retain possession of the land under the provisions of Section 22(2) of the Bengal Tenancy Act, inasmuch as the section provides that he was entitled to hold the land on payment of rent to the other co-sharers. The facts of the case in *Nand Kishore Singh v. Chander Dip Singh* A.I.R.1922 Pat. 193 were also similar. In these cases the interest of the co-sharer who had purchased the holding did not cease; he continued to be the proprietor after the partition, and hence it was held that he was entitled to retain possession. In the present case the plaintiff has ceased to be the proprietor of the village and she claims a raiyati interest in the land. In my opinion she has no right to remain in possession of the land as a raiyat when her proprietary interest has ceased. She can only continue to retain possession of the land u/s 22(2) of the Bengal Tenancy Act so long as she remains a proprietor, and whatever right she acquired continued only so long as her proprietary interest continued. The other cases cited at the Bar have no direct application to the facts of the present case. I am, therefore of opinion that the proprietary interest of the plaintiff having admittedly ceased to exist she has no title left in the land in dispute and she is not entitled to a decree declaring her title or awarding possession to her. In my opinion the decision of the Munsif was correct. The decree of the Subordinate Judge will be set aside and that of the Munsif restored with costs throughout.

Ross, J.

2. I agree.