
(1925) 05 PAT CK 0025

In the Patna High Court

Lala Bambhadur Lal and Others

APPELLANT

Vs

Musammat Gungora Kuar

RESPONDENT

Date of Decision : 22-05-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 22(2)

Citation : 89 Ind. Cas. 232

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

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an appeal by the defendants and it arises out of a suit brought by the plaintiff respondent for a declaration of her title and for recovery of possession. The suit was dismissed by the Munsif, but on appeal the decree of the Munsif has been set aside and the suit has been decreed by the Additional Subordinate Judge.

2. The facts as admitted or found are shortly these: "The plaintiff was the proprietor of 8-annas of Mouza Chandwa bearing Touzi No. 435, and Hanuman Sahay and Lal Narayan were the proprietors of the remaining 8-annas share. Hanuman Sahay and Lal Narayan instituted a suit for rent against two raiyats Aklu and Jumanwho had a holding of 1 bigha, 7 kathas, 10 dhurs within this touzi. They obtained a decree and sold the holding in execution and purchased it themselves in 1909. Delivery of possession was given to them on the 21st of June 1909. The defendant No. 1 who is one of the appellants in this case, the other appellants being his co-sharers obtained a settlement of the holding from Hanuman Sahay and Lal Narayan. The plaintiff brought a suit of her share of the rent in the year 1911. This suit was against the original tenants Aklu and Juman, and Hanuman Sahay and Lal Narayan were also made parties to the suit. A decree was obtained by the plaintiff, and in execution thereof the holding was again sold and purchased by the plaintiff in November 1913, and she alleges to have taken delivery of possession on the 17th of May 1914. The Record of Rights of the village in dispute was finally published in 1918 and in the khutian the

defendants were entered, as being in possession of the land in dispute but as trespassers. The plaintiff brought the present suit for a declaration of her title as purchaser and for a declaration that the defendants had no right or interest in the land in dispute and that the entry in the Record of Rights as regards the possession of the defendants was wrong. It appears that subsequently the plaintiff's proprietary interest was sold and purchased by one Bikramjit Misser. In the plaint as originally framed the plaintiff wanted a declaration of her title as proprietor, but at the hearing she tried to amend the plaint by claiming a raiyati interest in respect of the land in dispute, her proprietary interest, as already said, having been sold and purchased by Bikramjit Misser.

3. The learned Munsif found that the status of the plaintiff in respect of the land in dispute was that of a bakasht holder and that she was not the raiyat of the land and that as her proprietary interest had been sold she had no interest subsisting in the land in dispute. He accordingly dismissed the suit.

4. On appeal by the plaintiff the learned Subordinate Judge has set aside the decree of the Munsif and has held that the status of the plaintiff was that of a raiyat and that the sale of her proprietary interest did not affect her raiyati interest. He accordingly made a declaration in favour of the plaintiff as regards her title to the land as a raiyat and directed that she be put in possession thereof.

5. The defendants have come up in second appeal to this Court.

6. 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 decisions of this Court in *Ram Prasad v. Gopal Chand* 58 Ind. Cas. 955 : 2 P.L.T. 163. *Nand kishore Singh v. Mathura Sahu* 65 Ind. Cas. 586 : 3 P.L.T. 13 : A.I.R.(1922) (Pat.) 193 and *Emamuddin v. Mohammad Rashidul Huq* 53 Ind. Cas. 110 : 4 P.L.J. 540. On the other hand reliance has been placed on behalf of the appellants upon the cases of the *Midnapur Zemindary Co., Ltd. v. Naresh Narayan Roy* 80 Ind. Cas. 827 : 29 C.W.N. 34 : A.I.R.(1924) (P.C.) 144 : 26 Bom. L.R. 651 : 47 M.L.J. 23 : 51 C. 631 : 35 M.L.T. 169 : (1924) M.W.N. 723 : 20 L.W. 770 : 51 I.A. 293 : L.R. 5 A. (P.C.) 137 : 23 A.L.J. 76 : 3 Pat. L.R. 193 (P.C), *Roshan Ali v. Chandra Mohan Das* 75 Ind. Cas. 417 : 50 C. 749 : 27 C.W.N. 759 : (1923) AIR (C.) 701, *Stonewigg v. Divarka Singh* 45 Ind. Cas. 706 : 4 P.L.W. 428 , *Basudeo Narain Vs. Radha Kishun and Dabindra Missir and Others*, , and *Raja Ram Sahu v. Jhanti Gope* 34 Ind. Cas. 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 raiyat 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 lie ceases to be a 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 Prasi v. Gopal Chand 58 Ind. Cas. 955 : 2 P.L.T. 163, 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 that land on payment of rent to the other co-sharers. The facts of the case in Nandkishore Singh.v. Mathura Sahu 65 Ind. Cas. 586 : 3 P.L.T. 13 : 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 raiyali interest in the land. In my opinion she has no right to remain, ill possession pi the land as a raiyat when her proprietary interest has ceased. Slip 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.

7. I agree.