

(1936) 09 PAT CK 0047
In the Patna High Court

(Lala) Deo Narain Lal and Others

APPELLANT

Vs

Ram Khelawan Singh and Others

RESPONDENT

Date of Decision : 09-09-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 19, 20, 21

Citation : AIR 1937 Patna 98

Hon'ble Judges : Varma, J

Bench : Division Bench

Judgement

Varma, J.—This is an appeal on behalf of the defendants against a judgment of the lower appellate Court decreeing the suit of the plaintiffs which was originally dismissed by the trial Court. The suit was for a declaration of title with regard to khata Nos. 11 and 12 and the prayer was that the plaintiffs should be declared to be occupancy raiyats of those khata numbers and that the entry in the batwara suit that these lands were the bakasht malik should be corrected as it was not binding upon them. There was a large number of defendants consisting chiefly of the landlords of the village. Only two sets of them appeared and contested the suit and the third set did not. The suit was dismissed by the learned Munsif against the contesting defendants, but it was decreed against the non-contesting defendants. The defence was that the lands came into the possession of the sixteen annas landlords as bakasht and that the plaintiffs being co-sharer landlords were put into cultivating possession of the suit lands on the condition of their paying to the other co-sharers their share of the profits. Now the plaintiffs based their claim to be recognised as occupancy raiyats in three different ways: firstly, as heirs of one Hit Lal who left a widow known as Mt. Chhathia after whose death they came to be in possession as her heirs; secondly, they said that there was a settlement with them between the landlords on lines similar to the compromise (Ex. 2) entered into between the 11 annas 9 pies maliks and the present defendants; and, thirdly, that from the conduct of the contesting defendants manifested by a series of rent receipts which are numbered as Ex. 3 and their road cess return which is Ex. 5, it appears that the landlords recognised

them as occupancy tenants.

2. As I have mentioned above, the learned Munsif dismissed the suit entirely. The learned Subordinate Judge has upheld the finding of the Munsif with regard to the first point and has come to the conclusion that the plaintiffs did not come into possession of the lands as heirs of Mt. Chhathia. He has also discarded the story that there was a settlement between the present appellants and the plaintiffs; but he has differed from the learned Munsif on the third point. The learned Munsif had discarded Exs. 3 and 5 as pieces of evidence to be utilised against the contesting defendants; but the lower appellate Court has gone into the matter and has come to the following conclusion; with regard, to the receipts, the lower appellate Court says that these receipts purport to have been granted by the contesting defendants and the fact that the defendants did not produce their counterfoil rent receipt books would entitle the Court to draw an inference against them in the sense that they would not be allowed to question the genuineness of the receipts produced by the plaintiffs. He also refers to the fact that some witnesses who could have thrown light on the matter were not examined; and then he comes to the conclusion that these receipts are genuine. With regard to the road cess return the lower appellate Court very pertinently points out that the plaintiffs were mentioned in a column which is reserved for tenant; but he further observes that if they were to be described otherwise, that is as maliks, they would have been so described just as Gouri Mahton has been described as a malik. From these two items of evidence, Exs. 3 and 5 and after referring to some oral evidence on the point, he comes to the following conclusion:

I think that the rent receipts (Ex. 3 series) and the road cess return (Ex. 5 series) are the documents which fully prove that these contesting defendants also did recognise these plaintiffs as tenants, though they fought up to the Board of Revenue in the commutation case.

3. He further finds towards the end of his judgment:

For all the reasons I have given above, I hold that these contesting landlords also accepted these appellants as raiyats just as the lands of 11 as and odd share did. Therefore this point must succeed, and the appeal must be allowed with the result that the suit will be decreed, declaring the plaintiffs-appellants raiyati right in the disputed lands of Chhathia.

4. Referring to the latter quotation if the finding only was that the contesting land-lords accepted these appellants as raiyats there was not much to say; but the trouble begins with the second sentence of the quotation. Knowing as we do that the prayer was that the plaintiffs should be declared to be occupancy raiyats with regard to khata Nos. 11 and 12, the ordering portion of the lower appellate Court's judgment which says that the suit will be decreed, amounts to this: that although his finding does not go beyond this fact that the landlords recognised them as raiyats, by his decreeing the suit he has declared them to be occupancy

raiyaats. Mr. Baldeo Sahay has urged that the judgment of the lower appellate Court is not sustainable inasmuch as, even if the findings of the lower appellate Court are accepted, they do not justify the declaration that the plaintiffs were occupancy raiyaats. The institution of an occupancy right is a creature of statute. Recognition means existence of something from before. If the occupancy right had not been acquired from before, mere recognition would not confer occupancy right upon a raiyat. My attention has been drawn to the various sections of the Bengal Tenancy Act like Sections 19, 20, 21 and 22, and the general scheme of the enactment to show the various types of tenants that are contemplated by that enactment and the various incidents connected with those tenancies or raiyati rights. Mr. B.N. Mitter appearing on behalf of the plaintiff-respondents has urged that the order of the lower appellate Court decreeing the suit was perfectly in order because if one looks at the receipts one will find that they are more than twelve years old and it must be presumed that the lower appellate Court saw these pieces of documentary evidence before delivering his judgment and therefore his finding means a finding of fact which should not be interfered with in second appeal. I am afraid the lower appellate Court did not consider it important to refer to the age of the receipts and the statement that he must have looked into the age of these documents before coming to his finding goes against the respondents to this extent that although the age of the receipts was staring in the face the lower appellate Court did not act upon it nor even mention the fact in his judgment. All that he did was to base his finding upon the fact that the receipts showed that the plaintiffs were recognised as tenants. Reference has been made to the case in *Bindeshwari Prasad Singh v. Kesho Prasad Singh* AIR 1926 PC 79, in which their Lordships at p. 167 remarked that:

A right of occupancy under the Bengal Tenancy Act, 1885, appears to be a statutory right, and is not conferred by a gift from a proprietor.

5. That being so, the lower appellate Court having discarded the case of the plaintiffs with regard to the question of heirship and settlement and on the third point having come to this finding alone that the plaintiffs were recognised as tenants by the contesting landlords, the decree based on this finding must be set aside because there is a big gap between the finding that the tenant was recognised as such by the landlord and an order that the tenant should be recognised as an occupancy raiyat. Under these circumstances I would set aside the decree of the lower appellate Court and restore that of the Munsif. The appeal is accordingly allowed with costs. Leave to appeal under the Letters Patent is refused.