

(1933) 10 PAT CK 0047
In the Patna High Court

Lambodar Chakravarti

APPELLANT

Vs

Kedar Manjhi and Others

RESPONDENT

Date of Decision : 26-10-1933

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 79

Citation : AIR 1934 Patna 239 : 151 Ind. Cas. 144

Hon'ble Judges : Wort, J

Bench : Single Bench

Judgement

1. This is an appeal arising out of an action in which the plaintiff in substance claimed the correction of the Record of Right's. The record returned the principal defendants as occupancy raiyats under the plaintiff. The plaintiff came forward with a case that in 1320 there was a mortgage to the defendants and after the expiration of that mortgage another mortgage was granted to the defendants. A part of the story put forward by the plaintiff has been characterised by both the Courts below as false and the learned District Judge in the Court of Appeal below states that the object of the suit, which, according to the Judge, was brought in collusion with some of the defendants, was to dispossess the principal defendants from their occupancy rights. One important fact was found by the learned District Judge, reversing the decision in that regard of the Munsif, and that was that Ex. B, the patta. was a genuine document. Ex. B was a patta granted by the plaintiff to the defendants in the year 1287. The period of the patta was ten years, and it is clear from the findings of the Court below that the defendants held over from 1297 to the year 1320. It must not be understood that I mean that in 1320 the defendants gave up possession. The question is the basis of one of the controversies before this Court.

2. Now, as I have indicated, the Courts below dismissed the plaintiff's suit very largely on the ground that the greater part of it was false. It would appear that before the District Judge the plaintiff had claimed to redeem his mortgage of 1320 on the payment of the consideration money, namely, Rs. 250. To use the

words of the learned District Judge, it is argued that since the suit is within twelve years of the expiry of the sudbandhak the plaintiff should get a decree for recovery of possession on redemption of the mortgage by payment of Rs. 250. This the learned Judge, in my opinion, rightly refused as it was not the plaintiff's case.

3. It is difficult to appreciate the argument of the appellant in this Court. On the facts as found many of which were in favour of the plaintiff, one matter clearly stands out and that is that as the defendants were in possession from 1287 to at least 1320, the date of the mortgage bond, they had acquired occupancy rights under the Chota Nagpur Tenancy Act. The only possible answer to that case would have been that in 1320 the defendants delivered up possession to the plaintiff, thus relinquishing such rights that they may have had in the land. Whether that would have been contrary to Section 79, Chota Nagpur Tenancy Act, in my judgment, need not be decided. Mr. Mazumdar on behalf of the appellant suggests that as there was no finding on the question of whether the defendants delivered up possession in 1320, the matter should go back to the District Judge for a finding on that question. The only possible support that argument can have is the statement of the learned District Judge to this effect:

Defendants are in my opinion mortgagees holding over since the expiry of the sudbandhak in 1324.

4. As I understand his judgment, and as I have to read it as a whole, it is clear that the learned Judge does not mean that the defendants only possible possession was that of mortgagees holding over till 1320, because there is a most distinct finding by the learned District Judge that the patta was genuine and therefore the defendants were in possession under that patta. It seems to me that the answer to the whole argument is this, that the plaintiff must be assumed to have known that position and having regard to the possibility of which he must have been aware that the Judge would have found that the defendants entered into possession under the patta, and as they did not ask (and this is clear) for a finding whether the defendants were in possession or not in 1320, it must be assumed that the plaintiff realized that the defendants were in possession whatever their rights may have been.

5. To sum up, the defendants went into possession in 1287, they remained there, and in 1320 the mortgage bond was executed in their favour by the plaintiff who was the brahmottardar. This mortgage could in no way affect the rights of the defendants unless there was a definite relinquishing of their rights in the year 1320. This was never the case of the plaintiff, although it is said that the mortgage bond recites the fact (incidentally by the plaintiff himself) that he got possession of the property. In my judgment, therefore, although certain criticism might be levelled against the judgments of the Courts below, the findings are sufficiently clear that the defendants had acquired occupancy rights in the land and consequently in substance the plaintiff's claim fails. In my judgment, therefore, this appeal fails and must be dismissed with costs.