

(1927) 10 PAT CK 0001
In the Patna High Court

Madho Lal and Others

APPELLANT

Vs

Mahadeo Rai and Others

RESPONDENT

Date of Decision : 31-10-1927

Acts Referred:

Citation : AIR 1928 Patna 202 : 106 Ind. Cas. 389

Hon'ble Judges : Wort, J;Das, J

Bench : Division Bench

Judgement

Das, J.—In this case the plaintiffs, who are the appellants before us, sued for recovery of khas possession of two plots of land which were recorded in the Record of Rights under two khewats. Plot No. 1410 is in khewat No. 3/1 which was the khas" khewat of the defendants second party. Plot No. 1395 was recorded in khewat No. 3/6 which was the khewat of the defendants first party and the defendants second party jointly.

2. The case of the plaintiffs is that they took a settlement of the disputed lands from the defendants second party and that they are entitled to recover possession thereof. It is not disputed that at the date of the settlement in question the estate was under partition and that the disputed lands have now been allotted to the takhta of the defendants first party who contest the suit.

3. The learned Judge in the Court below has found that there was a private arrangement between the defendants first party and the defendants second party under which the former were in possession of the joint bakashat lands and the latter were in possession of the joint raiyati lands.

4. The learned Advocate for the appellants contends that the defendants second party being in possession of these lands were entitled to settle the same with them. I am unable to agree with this contention. It is well settled that a co-sharer has no right to deal with joint property in such a way as to affect the rights of the other co-sharers. The case of waste lands stands on a different footing altogether; but so far as tenancy lands are concerned, a co-sharer cannot

prejudice the interest of the other co sharers. As I have pointed out the disputed lands have fallen to the takhta of the defendants first party and I can see no ground whatever for holding that the defendants first party would have this encumbrance on their property. The case rests on a principle and is covered by authorities. It is not necessary to refer to all the authorities; it will be sufficient for us to refer to a decision of the Full Bench of the Calcutta High Court in Niranjan Mukherjee Vs. Soudamini Dasi and Others, where it was pointed out that a person to whom a parcel of land has been allotted by a decree for partition of a Civil Court does not take it subject to a permanent lease granted by his former co-owners without his concurrence when the land was the joint property of all the G sharers.

5. This appeal must be dismissed with. costs.

Wort, J.

6. I agree.