

(1934) 01 PAT CK 0007
In the Patna High Court

(Mahant) Ram Prakash Das and Another	APPELLANT
Vs	
Banlcey Behari Lal and Others	RESPONDENT

Date of Decision : 05-01-1934

Acts Referred:

Citation : AIR 1934 Patna 394

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

Bench : Full Bench

Judgement

Wort, J.—The question which we have to determine in this case is what is the basis upon which the mesne profits are to be assessed against the defendants first party and the defendants fourth party who are respondents in these appeals. The learned District Judge has awarded mesne profits against those parties to the plaintiff on the basis of the actual rent which defendants first party received from defendants fourth party. So far as the bhaoli lands are concerned he has awarded mesne profits against defendants first party to the extent of a half of the produce jointly and severally against both sets of defendants. There is a cross-objection as regards the bhaoli lands and this objection can be dealt with in a sentence.

2. The contention of defendants first party before the learned District Judge was that defendants fourth party had paid the produce rent to the Mahant direct. This the learned Judge has, on a question of fact, negatived, and in my judgment that disposes of that matter. The question, as I have stated, is a pure question of fact and the learned Judge having come to a conclusion against the defendants first party we have no jurisdiction to interfere with it in this case.

This litigation has been very protracted but this much is now established: that defendants first party were the raiyats, and defendants fourth party were the under-tenants.

3. The defendants first party who have been ejected in this suit came into possession by reason of their purchase of the raiyati lands which had been

purchased in execution of a mortgage decree which had been executed in their favour by one Raghunandan. Raghunandan had obtained the raiyati interest by purchase in execution of certain rent decrees which either the plaintiff appellant or his predecessor-in-title had obtained against the raiyats. Defendants fourth party represented the original raiyats of the holdings who were allowed to stay in possession after the purchase by Raghunandan. Now the defendants first party have been ejected by reason of the decision of this suit that by the mortgage by Raghunandan it was to be assumed that Raghunandan had abandoned the holding and therefore entitled his landlord to possession.

4. It is argued by Mr. P.R. Das that a very considerable confusion has arisen in this case by reason of a decision in certain other cases to which I now propose to make reference. One was an action by Raghunandan against Moinul Huq in whose name the purchase had been made in the rent sales. Raghunandan's suit was to establish his title as the real purchaser. That litigation was compromised and it appears that in the compromise it was stated that Raghunandan was a tenure holder. The other litigation to which reference should be made in this connexion was by the raiyats who are represented, as I have said, by defendants fourth party against defendants first party and one Danby. What happened was this.

5. When defendants first party had purchased in the execution of the mortgage decree they purported to grant a thika lease to Danby. Danby, it appears, attempted to obtain possession; he was resisted by the raiyats and the raiyats brought an action to establish their title.

From the judgment of this Court it would appear that in that case defendants first party made an admission, that they were tenure-holders, and it is argued by Mr. P.R. Das that by reason of that admission the only decision which the Court could come to in that case was that defendants fourth party were raiyats.

6. This point is material for the purpose of Mr. Das's argument which is to the effect that the litigation to which I have just made reference was collusive and that if it was held, as apparently it was, that defendants fourth party were raiyats, then only in those circumstances could it be said that defendants first party were excused from themselves taking possession and cultivating the land. It will be seen that this is material upon the question of the basis upon which mesne profits are to be ascertained. It is said that defendants first party with ordinary diligence should have received the whole produce from the land and not merely the rent from their sub-tenants. It is argued that this suit to which I have already made reference was collusive for the purpose of creating evidence in anticipation of this litigation.

7. Now it will be seen that the question which is really to be determined is whether defendants first party and defendants fourth party can be, in any sense of the term, considered joint tortfeasors. It is on that basis that Mr. P.R. Das contends that the liability for these mesne profits should be joint and several.

The object of the appellant is clear that he desires to obtain the whole of the profits from one of the defendants. For the purpose of this decision his intentions are quite immaterial. Mr. Das relies on the case of Doe v. Harlow 12 AD & E 40. That was a case in which one Warren had held over after the expiration of his term. During the term he had put into possession one Harlow, who in turn had sublet to Kelly. At the trial, judgment was given for mesne profits against both Warren and Harlow and it was argued that Warren not being in possession was not liable.

8. But Lord Denman, C.J., had held that in the circumstances of the case there was some evidence against Warren--evidence which could be considered by a jury--and discharged the rule for a new trial.

Their Lordships of the Judicial Committee of the Privy Council in cases to which I shall in a moment refer have stated that the case of Doe v. Harlow 12 AD & E 40 settled no principle. If I may say so with respect not only is that so, but it is a knowledge of the the procedure of the Common Law Courts in England of that day which is necessary in order to understand the decision. The argument there was that Warren was in no circumstances liable for mesne profits because no judgment in ejectment had been issued against him.

9. In those days it was necessary first of all to establish one's title by ejecting the trespasser and then bringing a separate action for mesne profits. It was in those circumstances that counsel for Warren had argued that in no circumstances could Warren be held to be liable for mesne profits. It was then decided that there was some evidence against Warren because Warren and his sub-tenant had both refused when called upon to deliver up possession. That case in no circumstances has any application whatever to the facts of this case. The question in Doe v. Harlow 12 AD & E 40 was not a question whether they were joint tortfeasors but whether there was any evidence at all of Warren being in possession.

10. The only ground upon which the appellants can succeed here is to show that, contrary to the decision of the learned District Judge, the defendants first party and defendants fourth party are joint tortfeasors. The learned District Judge has said that: where there is no combination in deprivation of the plaintiffs by the defendants, which deprivation, though wrongful has been caused in good faith in the assertion of an imperfect title, the strict rule of joint and several liability cannot be enforced.

He goes on to add that:

The appellants were in possession in the bona fide belief that they were really tenure-holders, in which case all that they could have realised for nakdi lands Was a yearly cash rent of Rs. 651-7-6.

11. Two other cases have been referred to in this Court, one is Pugh v. Ashutosh Sen AIR 1929 PC 69. The only purpose for which I shall make reference to those

cases is to refer to the statement of Lord Warrington towards the end of his judgment in which he says in commenting upon the decision of this Court:

Neither the fact that he was their lessor, assuming, contrary to their Lordships' view that he was a lessor in the proper sense of the terms, nor that he "encouraged" the wrong-doers, whatever this may mean, would be sufficient by itself to support a finding that he was a joint tortfeasor.

The question is whether on the facts and circumstances as found by the learned District Judge in this case it can be said here that the defendants 1st party were joint tortfeasors with defendants fourth party. As I have stated, the fact so far as this particular suit is concerned is that the defendants first party are raiyats and the defendants 4th party their under-tenants.

12. But in deciding whether there was any evidence upon which it could be held that defendants first party were joint tortfeasors with defendants fourth party regard must be paid to what was considered at any rate to be the relation between the defendants first party and defendants fourth party at the time.

This suit was started on 17th January 1919. Mesne profits could be obtained in this suit back to 17th January 1916. The litigation between the raiyats and defendants first party was decided in this Court on 3rd July 1917, but it would appear that there was a decision against defendants first party at least one year before that and subtracting that period from the period during which the mesne profits could be obtained there was a balance of only a few weeks or few months at the most. That was the decision as regards that litigation.

13. It was definitely decided, whether on the admission of defendants first party or not in my judgment is quite immaterial, that defendants fourth party were raiyats. Now can it be said in those circumstances that the defendants first party should have obtained possession and cultivated the land themselves? In other words were they lacking in diligence in merely contenting themselves with the rent which they should have recovered from defendants fourth party? In my judgment it could not be said that there was any evidence that they lacked ordinary diligence. It seems to me that the statement which was made by Lord Warrington in the case to which I have referred is sufficient to dispose of this case, because it is not suggested that there is any evidence in this case, apart from the argument to which I have already referred, that the litigation between the tenants and defendants first party was collusive or there was any lack of diligence on the part of defendants first party: and as Lord Warrington has stated the mere fact that there was the relationship of landlord and tenant or lessor and lessee between the parties, nor the fact that they in any sense encouraged the sub-tenants was sufficient to support a finding that they were joint tortfeasors.

14. Nothing has been referred to which could be suggested as being evidence that even defendant first party encouraged defendants fourth party.

In my judgment no ground has been shown why the judgment of the learned

District Judge should be set aside, and for the reasons which I have stated it seems to me that the appeals fail and must be dismissed with costs. The cross-objection is also dismissed with costs.

The period for which the defendants are to be held liable for mesne profits is a matter to be decided by the learned Judge in the Court below.

Varma, J.

15. I agree.