
(1923) 08 PAT CK 0011
In the Patna High Court

Maharaj Rai

APPELLANT

Vs

Maharani Janki Kuer

RESPONDENT

Date of Decision : 09-08-1923

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106

Citation : AIR 1924 Patna 655

Hon'ble Judges : Dawson Miller, C.J;Mullick, J

Bench : Full Bench

Judgement

Dawson Miller, C.J.—This is an appeal under the Letters Patent from a decision of a Single Judge of this Court dismissing an appeal from the District Judge of Muzaffarpur which in its turn reversed a decision of the Assistant Settlement Officer of Motihari.

2. The plaintiff, Maharani Janki Kuer who is the proprietor of the Bettiah Raj at present under the manager ship of the Court of Wards, instituted the proceedings out of which this appeal arises claiming that a certain entry in the Record of Rights finally, published in the year 1916 should be cancelled, and that her right to a half share in the trees upon the defendant's holding might be declared.

3. The Assistant Settlement Officer dismissed the claim which was brought u/s 106 of the Bengal Tenancy Act.

4. On appeal to the Special Judge he overruled that decision and found that the plaintiff was entitled to a half share in the trees on the defendant's holding in accordance with the custom prevailing in the Bettiah Raj.

5. That decision was affirmed by the learned Judge of this Court on second appeal.

6. The defendant has appealed. The only question for determination in this appeal is whether the first Appellate Court and the learned Judge of this Court

were right in their construction of a grant made to the defendant's ancestor by the ancestor of the plaintiff in the year 1858. In that year owing to services performed to the then proprietor of the Bettiah Raj by Bhicha Raj, the then tenant of the holding in question, the proprietor of the Bettiah Raj gave up his right to trees standing on the defendant's holding and the question for determination is, whether that relinquishment of the right of the Bettian Raj was intended to be permanent or whether it was merely intended to operate during the lifetime of Bhicha Rai. The document in question is set out in the judgment of the learned Judge of this Court. It is in the nature of a parwana addressed to the gomashtras, patwaris and zilladars of village Chhattia Tappa Sonswal. It recites that Bhicha Raj has done great good work and rendered great help in the boundary dispute with the Huthwa Raj, and then proceeds thus, according to the translation adopted by the learned Judge: "Hence, because of that good work it is ordered that whatever trees have been planted by his ancestor and also if he plants any, the share of the Raj in them is given up. Hence this parwana is written to all forbidding you in any way to interfere with the trees standing on the nakdi holdings of the said Bhicha Rai for ever." It is contended on behalf of the plaintiff, as was found by the Special Judge and by the learned Judge of this Court, that the words which I have referred to merely created a relinquishment of the plaintiff's right during the lifetime of Bhicha Rai. The defendant, on the other hand, who is the descendant in the third generation from Bhicha Rai contends that the relinquishment was absolute and permanent. He further contends that he and his ancestors have been in possession of the holding ever since the year 1858 when this document was executed and that, with the exception of one occasion when a sum of Rs. 400 odd was forcibly extracted from him by the proprietor of the Bettiah Raj, he has never paid any sum to the landlord in respect of his share of the trees. The plaintiff contends that we ought to deal with this document in the same way as if it were in fact a grant of land and as it contains no words of inheritance, it was, therefore, never intended that the grant should extend over a longer period than the life of the grantee and that, notwithstanding the words at the end of the document, which restrained the plaintiff's servants from interfering with the trees on the defendant's holding for ever, still there being no words of inheritance in the document it cannot be treated as a grant for anything beyond the lifetime of the grantee, it is quite true that even if a document should contain words such as these that is to say the word "always" or the words "for ever" or similar words if the grant is clearly the grant of a life-interest only, the mere use of such words will not have the effect, of extending the grant beyond the lifetime of the grantee. That was the basis of the decision in the case of *Aziz-un-nissa v. Tassaduq Husain Khan* [1901] 23 All. 324. On the other hand, there is also abundant authority for the proposition that if there are no words of limitation in a grant then, even if there are no specific words of inheritance, it may still be a grant in perpetuity. See *Bhaiya Ardawan Singh v. Uday Pratab Singh* [1896] 23 Cal. 838, *Kooldeep Narain Singh v. The Government* [1871] 14 M.I.A. 247

7. It appears to me that we must approach this document with a view to ascertaining what was the exact intention of the grantor and one must not, I think, lay too much stress upon the use of any particular word without considering the context and the other provisions in the document. The first observation I have to make is in this is not a grant of land to a grantee. The so-called grantee in this case was already the occupancy holder of the land in question and as such had a right, not only during his own life-time but a permanent interest in the holding descendible to his heirs. According to the general law prevailing in this part of India the landlord would be entitled to the whole of the trees standing upon the holding, but by the custom of the Bettiah Raj the landlord is only entitled to a half share in the trees standing upon the holdings of his tenant, the tenant being entitled for the other (sic). Now this document to my mind clearly indicates that it was the intention of the landlord to give up his right, and indeed it is in terms a relinquishment of his right to his half share in the trees on the holding in question and it is a relinquishment in favour of the tenant. It is addressed to his gomasthas, patwari and zilladars who would be the proper persons to protect the landlord's interest and see they recovered anything that was due to him out of the property in question and it forbids them to interfere in any way with the trees standing on the holding of Bhicha Rai forever. It seems to me, therefore, that the intention was that the landlord should give up his right to a half share in the trees and for that purpose he directs those who will be responsible for protecting his interests not in future to interfere in any way with the trees on that holding. I ought perhaps to point out that there is a passage in the document which comes immediately after the words "it is ordered that whatever trees have been planted by his ancestors" which has been rendered by the learned Judge "and also if he plants any." That may possibly be a proper translation of the words used but it is not necessarily so, and in fact the words actually used were somewhat obscure. The words in the vernacular are "agar nasab kare" which literally rendered into English mean "if should plant." There is no personal pronoun showing the person indicated who might plant. It may possibly refer to Bhicha Rai himself as it has been translated by the learned Judge. It may, on the other hand, have a general significance in which, case the proper interpretation would be "if one should plant any" although the word "any" does not appear, and in such a case it would make the document apply not only to the trees which had been planted by the ancestors of Bhicha Rai but also to any trees which might be planted in the future. The meaning is not, as I have said, altogether clear but it evidently is intended to include something beyond the trees already planted on the land and to include trees which may be planted at some future time by somebody, and the conclusion which I have arrived at, giving the best judgment I am able, to this somewhat obscure expression, is that the intention was that the landlord should, relinquish his right to the trees both present and future, and this seems to me to be borne out by the concluding words of the document which forbid his servants from interfering in any way with the trees on that holding for ever. This interpretation also appears to me to be in consonance with what has actually taken place since

the year 1558 There is no evidence in the case to show that any claim had even been made by the landlord to participate in the produce of the trees ever since the document was executed with the one exception when by forcible means and under duress the tenant was obliged to disgorge a sum of something over Rs. 400. The conclusion I have arrived at is, that the learned Assistant Settlement Officer was right and that the Special Judge and the learned Judge of this Court on appeal were wrong in their interpretation of this document. I would allow this appeal with costs and dismiss the suit of the plaintiff.

Mullick, J.

8. I agree.