
(1957) 11 PAT CK 0010
In the Patna High Court
Case No : A.F.A.D. No. 458 of 1951

Maheshwar Bhumij and Others	Vs	APPELLANT
Babi Sardarin and Others		RESPONDENT

Date of Decision : 14-11-1957

Acts Referred:

Citation : AIR 1958 Patna 243 : (1958) 6 BLJR 37

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : S.K. Sarkar, for the Appellant; Sushil Kumar Mazumdar and Tribeni Narain Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—This second appeal by the defendants, from the concurring decision of the learned Subordinate Judge, Purulia, affirming the decision of the learned Additional Munsif of Purulia, decreeing the plaintiffs' suit for declaration of their title to 1/10th share in the land of khata No. 28 of village Gordih and for recovery of possession and partition, has been referred to a Division Bench by B.P. Jamuar, J.

2. This appeal involves the interpretation of the words "Tabedar"" and "Sthitiban", and. the determination of the rights and incidents of a "Tabedari Sthitiban" holding.

3. During the survey settlement proceedings, the land in suit --khala No. 28 -- was recorded in the khewat (ext. 4) in the name of Kalicharan son of Dubraj Singh as "Sthitiban" holding on a quit rent of Rs. 2/5 with cess. It is further recorded therein that the tenant of this khata does the work of "tabedar" and so long as he will be in service, he shall pay the present attested rent; but should he give up the work voluntarily, he shall be bound to pay the fixed rent, that is Rs. 37/6/--, which was fixed as the rent of the holding with effect from the year 1321 B.S., from the same year. It was also recorded that should the Deputy

Commissioner dismiss him, he shall be bound to pay the said fixed rent from the following year. This record was made on the 3rd October, 1913 by the Assistant Settlement Officer in the khewat under khewat No. 5, in respect of village Gordih, thana No. 294.

4. The survey entry is in Bengali. The entry in Roman script is as below:

"Sthitiban: Ei khatar praja tabedari karya kare. Jo parjanta karya karibe sei parjanta bar-is man tasdiki khajna adai dibe. Swa-ichhai karya parityag karibe sei batsar hoibe wo Deputy Com-missioner Dismiss karibe tahar para batsar haite oi dharya khajna adai elite bodhya haibe."

The above entry, translated into English, stands as follows: "Permanent: The tenant of this khata does the work of a tabedar. So long as he will be in service, he shall pay the present tasdiki rent. Should he give up the work voluntarily he shall be bound to pay the said- fixed rent from the same year, and should the Deputy Commissioner dismiss him he shall be bound to pay the said fixed rent from the following year."

5. On the above entries therefore three questions arise: first, what is the meaning of the ward "Sthitiban"? Second, what are the rights and liabilities of a tabedar. and, third, what are the incidents of a tabedari sthitiban holding?

6. In order to determine and decide the above questions, it is necessary to state the case of the parties, briefly, bearing on the questions at issue.

7. The disputed holding belonged originally to one Dubraj Singh. Dubraj Singh had five sons, one of whom was Kalicharan, husband of defendant 1, Sundarmoni. She having died during the pendency of the suit, was substituted by her daughters who are defendants 1 and 1(ka). Defendants 2 to 7 are the sons and grandsons of Anant, second son of Dubraj Singh. Defendants 8, 9 and 10 are the great grandsons of Raghunath, third son of Dubraj Singh. Plaintiffs 1 and 2 are two widows of Chamu, one of the two sons of Bheyanath, fourth son of Dubraj Singh. Defendant 13 is the son of Baneswar, second son of Bhayanath, the 4th son of Dubraj Singh. Defendant 11 is the son and defendant 32 is the widow of the son of Gopinath, the fifth son of Dubraj Singh.

8. The plaintiffs' case was that after the death of Dubraj Singh, the original owner of the holding, it devolved on his five sons jointly and after their death, the plaintiffs along with defendants 1 to 13 have been in joint possession of the same. During the survey settlement proceedings. Kali Charan, the person at present recorded in the survey record of rights, used to act as the tabedar. and, therefore, the holding was recorded in his name in the khewat as "Sthitiban", but, actually the holding belonged to Kali Charan and his four other brothers; and, as such, the plaintiffs were entitled to 1/10th share of the holding. There has been no partition thereof by metes and bounds, and, therefore, the plaintiffs brought the suit, out of which the present appeal arises, for declaration of their 1/10th share in the holding and for recovery of separate possession after

partition.

9. Defendant 1, the widow of Kali Charan, and, after her death, her daughters, defendants 1 and 1 (ka) as well as defendants 8 to 13, admitted the plaintiffs' claim. The result, therefore, was that the plaintiffs' claim was admitted by the descendants of Kali Charan, the person recorded, as also by the descendants of Kali Charan's three other brothers, namely, Bhaya-nath, Gopinath and Raghunath.

10. The suit, however, was contested by defendants 2, 3 and 7, sons of Ananta, and defendant 4, son of one of the three sons of defendant 7, and one of the three grandsons of Ananta, the fifth brother of Kalicharan. Their case was that the holding recorded in the Khewat belonged exclusively to Kali Charan and Anant, their ancestors, only; but, as Kali Charan was tabedar of the village, he alone was recorded in respect thereof. The other brothers of tabedar. Kali Charan, except Anant, had, therefore, no interest in the holding, and, consequently, they or their descendants were never in possession of the same.

11. The contesting defendants further pleaded that, according to the tribal custom prevailing amongst the Bhumija, females were excluded from inheritance. and. therefore, the plaintiffs being females were not entitled to maintain the suit. It is not necessary however, in the present appeal, to consider this question, because the learned Munsif found that the parties were not governed by any tribal custom under which the females were excluded from inheritance, and, that they were" governed by the law of the Hindus, and, this finding of the learned Munsif was not challenged before the court of appeal below or before this Court.

12. The learned Munsif, who heard the suit, in the first instance, held that the holding in suit was the joint property of Kali Charan and his four brothers, and, therefore, the plaintiffs were entitled to 1/10th share therein as claimed. On these findings, he decreed the plaintiffs' suit.

13. On appeal by the contesting defendants, the learned Subordinate Judge affirmed the finding of the learned Munsif, and. dismissed their appeal. The defendants, therefore, have come up to this Court on second appeal.

14. Mr. S.K. Sarkar, in support of the appeal contended that the holding in suit, being a tabedari tenure and Kalicharan, being a tabedar, as recorded in the survey kbewat, after his death, the holding passed on to the next tabedar, namely. Anant, as he was joint with Kali Charan, and, therefore, the other brothers of Kali Charan or their descendants could not legally claim any right therein which could be partitioned. In support of his argument, Mr. Sarkar placed strong reliance on a decision of Wort J.. sitting singly. in Naran Singh Vs. Baikunth Singh, .

15. As the just mentioned decision of Wort J., is the main sheet anchor of the argument of Mr. Sarkar, I wish to deal with it at this very stage.

16. In the above case, it was held that tabedari tenures are a form of inferior ghatwali tenures and the holder thereof has an absolute power of alienation. The tenure is ordinarily hereditary, the estate descending to such male member of the family as the zamindar approves as competent to perform the duties, and the member appointed does not hold on behalf of the family, and the other members have no rights therein, and the nature of the tenure is not altered in this respect by the fact that the services are no longer performed.

17. The above decision must, however, be taken as an obiter dictum, because of the following observation of his Lordship in that case. His Lordship Wort J., observed:

"As I understand the argument addressed to this Court on behalf of the appellant, it is that the tenure was in a form of raiyati interest which descended after the death of one of the holders to other members of the family by survivorship. The short answer to the whole case is that the finding of the Judges in the courts below is that the two brothers were separate. Nothing further need be said although there was a considerable discussion as to the nature of tabedari tenures, and I need only refer to the decisions of Privy Council in *Tekait Kali Pershad Singh v. Anund Roy* 15 Ind App 18 (B), and *Raja Durga Prashad Singh v. Tribeni Singh* 45 Ind App 251: AIR 1918 PC 112 (C)".

On the findings, therefore, that the two brothers were separate the question whether the tabedari tenure descended to the other members of the family of the tabedar by survivorship after his death did not arise for determination in the above case.

18. But that apart, in that case, the tabedar, as appears from the judgment, was not recorded as "Sthitiban". The absence of such an entry, in my opinion, makes much difference, and, therefore, the above decision cannot be considered as an authority for, or as a correct guide to the determination of the question involved in the present appeal.

19. The question, therefore, as to the nature of tabedari sthitiban holding is really a question of first impression, which falls to be decided in the present appeal. According to Appendix O, which is a glossary of Settlement terms, appended to the Final Report of the Survey And Settlement Operations in the District of Manbhum (1918-1925), written by B.K. Gokhale, Esqr., I. C. S. the word "Tabedar" means "The lowest grade of Ghatwal"; and, the word "Sthitiban" means "The status of a settled raiyat". According to the above meanings, therefore, the words "Tebedar Sthitiban" would mean a "Ghatwal having the status of a settled raiyat".

20. On the question under consideration, in the absence of any other authority, Sifton's Final Report on the Survey and Settlement of the Barahabhum and Patkum Estates in Manbhum District (1907 to 1912), would be very useful, and a correct guide.

21. At page 38, in paragraph 73, of the Final Report, Mr. (Later Sir) Sifton has said as below:

"Status of Tabedars. The legal status of the tabedars (the lowest grade of ghatwal), who occupied as service-holdings the lands reclaimed by themselves or their ancestors, and who were found to be the direct descendants of the original founder of their village, was a question which aroused considerable controversy. At the time of the ghatwali compromise, the tabedars were regarded as too insignificant to be required to become parties to the agreement, and their rights, of whatever nature they might have been, were therefore unaffected by the compromise proceedings.

The view taken by the Settlement Officer was, that the tenancies of tabedars were not originally service tenures, but were of an ordinary raiyati type upon which ghatwali services had been imposed after the tenancies were already in existence; that the addition of services to an already existing tenancy did not constitute it a "Service tenancy", from which the occupant was liable to ejectment on failure to perform his duties to the satisfaction of the authorities; and that the only penalty, to which a defaulting tabedar was liable upon dismissal, was the penalty of having his quit rent changed to a rent at full raiyati rates.

On the other side it was urged by the Deputy Commissioner, that these tenancies had been treated as service tenancies for several generations, and it was both undesirable and wrong to change at this stage the character which they had acquired: the services attached to these tenancies were very light, and in return for their performance the tabedars acquired two privileges of great importance to an aboriginal, namely, the immunity of his tenure from sale on account of arrears of rent and protection from his own improvidence, in that he was prevented from making any voluntary transfer of his lands or of any portion of them.

The question was eventually tried out in legal form with the Deputy Commissioner as plaintiff in a suit. The Appeal was heard by the Commissioner, who decided that the historical origin of the tabedari tenancies could not be ignored, that a "service tenancy" is one which is originated for the performance of services, and that a tenancy which, after it has already acquired a certain status, is subsequently burdened with services, does not change its original nature or conditions.

In accordance with this ruling, many of the tabedars have been recorded as raiyats with Khuntkatti rights: and those tabedars who, though not of Khuntkatti family, could yet prove their descent from ancestors whose names were traceable in the earliest lists of tabedars recorded, were entered in the record-of-rights as having the rights of settled raiyats in their holdings.

In this way 55 tabedars were recorded as raiyats with Khuntkatti rights and 236 as having the rights of a settled raiyat and only 172 were found to be service tenants appointed to escheat-ed-holdings of old tabedars."

22. In paragraph 74, at the same page, Mr. Sifton, as he then was, proceeded to state as follows:

"This gives rise to a new problem. The tabedars, who are recorded as settled raiyats or khuntkatti raiyats, can at any time resign their services to Government, and exchange their existing quit rent for a raiyati rent. The addition to the rent will be realized, not by Government, which loses the services, but by the village ghatwal, their landlord. If Government acquiesces in the loss of the services, it is obviously to the interest of the village ghatwal to induce all tabedars with occupancy rights to act in the same way, and the services of all such tabedars will be lost to Government.

I do not think this loss is inevitable. The old established liability of the village Ghatwal is to render personal service, and to provide in addition the services of a definite number of tabedars from his village, whom he must reward from the village lands hypothecated for service to Government. It does not appear that Government had originally much concern with the appointment of individual tabedars, and probably only exercised a veto over undesirables.

Enquiries in a number of ghatwali villages have shown that tabedari service has not always been hereditary. The old lists of tabedars show that the son of a tabedar has some times declined the service, but his grandson has reappeared, after an interval, resuming the post of the grandfather, and it does not appear that the son was obliged in the interval to give up his holding. Government took no interest in tabedari lands, but was only interested in the supply of tabedars being maintained; and when one of his villagers refused to serve or was incompetent for service, the village ghatwal would have to produce another villager to work in his place, making whatever concessions might be necessary to the latter, in the matter of remitting his rent.

Mr. Risley remarked that tabedars were no essential parties to the ghatwali comprise, because they merely held such lands as the village ghatwal might assign to them. It would probably be more correct to say, that the tabedar was only a raiyat assigned to the post by the village ghatwal. Government would appear therefore to be acting only in conformity with the custom of ghatwali procedure, in requiring, in any case where it thought fit, that the village ghatwal should produce a substitute to replace any tabedar resigning his post and resuming the condition of an ordinary raiyat."

23. In paragraph 75, at page 39, it is further stated that:

"The tenancies of tabedars were generally recorded as of a raiyati nature, and not tenures. But in some of the large whole-ghatwali villages, the tabedars were on a level with their village ghatwal, and the whole of the village lands were distributed more or less equally among the Ghatwali and the different tabedars. Paying rent to each of these tabedars were as many as ten or twelve cultivators, who held ancestral lands which had been in their families for several generations. Obviously these latter men were raiyats with a right of occupancy, and not under-

rai-yats. Accordingly, in a few villages, tabedars have been recorded as tenure-holders."

24. In paragraph 76, at the same page, it is also mentioned that:

"No other questions of status of raiyats presented any difficulty. The great majority of raiyats were found to be settled raiyats of their village, and even those who had not resided in their village continuously for 12 years were found in cases, where a regular settlement of rent had, taken place, to have by custom a right of occupancy and the status entries of "sthitiban" (settled raiyat) and Dakhalkar (raiayat with occupancy rights) were never opposed by the landlords.

In Manbhum, as in the other district of Chota Nagpur, it appears that the idea, that a raiyat of 12 years" standing has anv stronger title to his holding than a raiyat newly-introduced to a village by the landlord, is entirely foreign. Both alike have a right of occupancy in their lands. Generally speaking the only non-occupancy raiyats are those who held land for which they have not been assessed to rent, or who hold lands upon a produce rent. The payer of produce-rent is always regarded as only temporarily settled on his lands."

25. The above mentioned lucid exposition. of the tabedari question by Mr. Sifton, in my opinion, answers the questions posed by ma

26. In my judgment, therefore, the true view to take is, that a "tabedar" is the lowest grade of ghatwal, and, consequently, a tataedar tenure is a form of inferior ghatwali tenure. A tabedar is only a raiyat assigned to the post by the village ghatwal. Such tabedars are raiyats with rights of occupancy, and not under-raiyats. The status entry of a tabedar as "Sthitiban" con-notes that such a tabedar is a settled raiyat, and accordingly, a tabedari Sthitiban means a tabelar who has the status of a settled raiyat.

The tabedar, who is recorded as a settled raiyat, can, at any time, resign his services to Government and exchange his existing quit rent for a raiyati rent. Such a tabedar, as long as he renders personal service, is entitled to pay the quit rent, which is fixed for such a tabedari holding. But, the moment he declines, or resigns his services, or is removed, he will be liable to pay the fixed raiyati rent, which is attested for the holding.

Such a tabedari holding is not in the nature of a service tenancy, which will revert to the ghatwal on his refusal to render service, because a service tenancy is one. which is originated for the performance of services. A tabedari tenancy is a tenancy which, after it has already acquired a certain status, is subsequently burdened with service, and, therefore, it does not affect its original nature or conditions. Such tabedars, were recorded as raiyats with the status of Sthiti-ban, that is, settled raiyats.

27. Tabedari service is not always hereditary, but the tabedari land is heritable and is ancestral land of the sons of a tabedar. Tabedari tenancies are generally of a raiyati nature, and not tenures. A tabedari tenancy, although in one sense a

service tenancy, has to be distinguished from a real service tenancy because a tabedari tenancy does not constitute it a service tenure, from which the occupant was liable to ejectment on failure to perform his duties to the satisfaction of the authorities, because in the case of a tabedari tenancy, the only penalty, to which a defaulting tabedar was liable upon dismissal, was the penalty of having the quit rent changed to a rent at full raiyati rates.

Tabedars, therefore, are raiyats with Khuntkatti rights. A Tabedari tenure is not, strictly speaking, a ghatwali tenure, which is ordinarily hereditary, the estate descending to such male member of the family as the Zamindar approves as competent, and where it is the right of the family so long as they have male members competent to perform the duties, to have one or more of them appointed Ghatwals.

28. A tabedar, no doubt, is the lowest grade of Ghatwal. but his tabedari holding is not hereditary, like a ghatwali tenure, which would belong only to the person, who acts as the tabedar and not to the other members of his family, who are joint with him and, are members of his joint family. A tabedari holding is an ancestral holding which belongs to the entire family; and which after the death of the tabedar, would descend to the surviving members of his family.

It does not exclusively belong to the person who acts or who is recorded as a Tabedar so as to descend after his death only to his heirs, to the exclusion of his co-parceners who belong to his joint family. This is so obviously because a tabedar, on his refusal to render service, or on his dismissal from service, is not liable to ejectment on his failure to perform the duties. The tenancy of the tabedars was not originally service tenure, but was of an ordinary raiyati type upon which ghatwali service had been imposed after the tenancies were already in existence, and, for that reason the addition of service to an already existing tenancy did not constitute it a service tenancy.

29. In my judgment, therefore, simply because the disputed holding is recorded in the name of Kali Charan, the tabedar, having the right of a settled raiyat in the holding, will not show that the holding was the tenancy of Kali Charan alone; on the other hand, it clearly goes to show that it was not a service tenancy of Kali Charan alone, but that it was the ancestral property of Kali Charan and his brothers in view of the fact that this tabedari holding originally belonged to Kali Charan's father, Dubraj Singh.

The courts below have concurrently found that all the brothers of Kali Charan were in possession of the holding, and that the case of the contesting defendants, that it was the exclusive property of Kali Charan and his brother Anant only, was false. The courts below have also further found that the holding belonged to Dubraj Singh. and, after his death, it was possessed by his five sons in jointness.

The court of appeal below had further found that even if it is found that the plaintiffs were not in actual possession of the holding, they will be presumed to

remain in constructive possession thereof through their other co-sharers, and, therefore, the plaintiffs were entitled to the decree as prayed for.

30. In my opinion, the court of appeal below has correctly decided the appeal, and, I find no error of law in its decision, and accordingly, it is affirmed.

31. In the result, the appeal fails and is dismissed with costs.

Ramaswami, C.J.

32. I agree.