

(1950) 09 OHC CK 0013
In the Orissa High Court
Case No : S.A. No. 203 of 1949

Malati alias Mali Bewa and Others

APPELLANT

Vs

Lokanath Sahu and Others

RESPONDENT

Date of Decision : 25-09-1950

Acts Referred:

Citation : (1951) 17 CLT 67

Hon'ble Judges : Ray, C.J

Bench : Single Bench

Advocate : M.S. Rao, for the Appellant; S.N. Dasgupta and B. Das, for the Respondent

Judgement

Ray, C.J.—The suit is in respect of 005 of an acre to the north-west of the southern half of plot No. 58 with the total area of "142 of an acre in the town of Cuttack. One Natabar Sahu, admittedly the predecessor-in-interest of the Appellants before me (Defendants 1, 2 and 3), was the recorded tenant in respect of this plot. The latest settlement Record of Rights describe he status of his tenancy as that of Dar-chandanadar. This term "Dar-chandanadar" is a coinage having no legal implication in any of the tenancy or other laws of the country. "Dar" means "sub" or "under". It is because the immediate landlords, or to be more appropriate, lessors were chandanadars within the meaning of the Orissa Tenancy Act, Natabar was described as It Dar-chandanadar. Admittedly Natabar was in possession of this holding which is a homestead on which he was ordinarily residing. Natabar died about, to use the words of the learned Courts, below, 13 or 14 years before the hearing of the suit. How long before the institution of the suit, his death took place, has never been investigated. Natabar died leaving a widow and two daughters who are Appellants before me. It is not stated, far lees proved, that Natabar's widow has any other place to reside. The Plaintiff is a purchaser of half of the Chandanadar's right of this plot No. 58 and" he asserts that he has purchased a specific portion to the south being "071 of an acre, that is, half of the total area of 142 of an acre. This specific area must be

understood to have reference to his landlord's right over this area.

2. The question that was discussed in the Courts below was whether Dar-chandanadar's interest is a heritable one. I could not follow this contention at all. What is really contended for is that Dar-chandnadar's interest is a precarious tenancy interest. A precarious interest or a tenancy at will means one which is terminable on notice to quit. Till it is terminated like any other property, it must pass from father to son. However, before me it is conceded that after the death of Natabar, the Appellants were the tenants in respect of the lands in suit. But as the tenancy has to be terminated by notice to quit, such a notice is wanting in this case. Secondly, if the tenancy subsists, the question whether one of the co-sharer landlords or lessors can terminate the tenancy, in relation to a part of the lands included in the tenancy, assumes much greater proportion than it did in the Courts below who proceeded on the basis that after Natabar's death his heirs were trespassers. If the tenancy was subsisting as i is rightly conceded before me, it must be held that such a suit is not maintainable, for the reasons, firstly that there is no notice to quit terminating the tenancy, secondly, such termination cannot be confined to either an undivided share or even a fractional specified portion, thirdly that unless there is a partition of the chandanadar right binding on the tenant, the tenancy cannot be said to have been sub-divided so as to constitute the entire tenancy in respect of the portion purchased by the Plaintiff as between himself and the tenant concerned. It is a settled law that it is the entire body of lessors or landlords who can terminate the tenancy. Dar-chandanadar's tenure is one that is pre-eminently governed by the T.P. Act. It should engage the attention of the Courts below in a fresh it if any.

3. These are defects which are no doubt of formal character and I should concede to the request of Mr. Das Gupta appearing for the Plaintiff-Respondent to allow him to withdraw the suit with a liberty to sue afresh, subject to the following conditions, namely, that he shall pay all the costs of all the Courts borne up-to-date by the Defendants Nos. 1 to 3, namely, the Appellants and this payment must be made within a month from today. In default of such payment, the liberty to institute a fresh suit shall be deemed to be lost and the appeal shall stand decreed with costs throughout in favour of the Appellants.