

(1936) 09 PAT CK 0004

In the Patna High Court

Mt. Dulhin Shyam Sunder Koer

APPELLANT

Vs

Mt. Sheorachan Kuer

RESPONDENT

Date of Decision : 23-09-1936

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1937 Patna 235

Hon'ble Judges : Mohamad Noor, J

Bench : Division Bench

Judgement

Mohamad Noor, J.—This application is directed against a decree of the Small Cause Court Judge of Patna in a suit instituted by the plaintiff opposite party for recovery of compensation from the petitioner for using and occupying lands which are the common property of the parties. Various pleas were raised by the defendant in bar of the action. The learned Judge has overruled most of them and passed a modified decree. The defendant has filed this petition for revision u/s 25, Provincial Small Cause Courts Act. The only point urged before me is that on the facts of the case no decree could be passed. It is contended that it is open to a co-sharer to bring portions of common land in his own use and as long as his user does not amount to exclusion or ouster of his co-sharer the latter has no right to claim compensation or ask for accounts. Reliance is placed upon a single Judge decision of this Court in Shiva Narain Mahton v. Chandra Sekhar Prasad Singh AIR 1933 Pat 616 . This decision is based upon a decision of the Calcutta High Court in Chandra Kishore Chakravarty Vs. Biseswar Pal and Sachindra Kumar Goswami, executor to the estate of Bashiram Pal and Another, in which Page, J. explained some of the decisions of the Privy Council, e.g. Watson & Co. v. Ram Chund Dutt (1891) 18 Cal 10, Robert Watson & Co., Ltd. v. Ram Chand Dutt (1896) 23 Cal 799 and Midnapore Zamindary Co., Ltd. v. Naresh Narayan Roy AIR 1924 PC 144. In the last-mentioned case their Lordships of the Judicial Committee have observed:

Where lands in India are so held in common by co-sharers, each co-sharer is

entitled to cultivate in his own interests in a proper and husband-like manner any part of the lands which is not being cultivated by another of his co-sharers, but he is liable to pay to his co-sharers compensation in respect of such exclusive use of the lands. Such an exclusive use of lands held in common by a co-sharer is not an ouster of his co-sharers from their proprietary right as co-sharers in the lands,

2. In Chandra Kishore Chakravarty Vs. Biseswar Pal and Sachindra Kumar Goswami, executor to the estate of Bashiram Pal and Another, the Calcutta High Court held that the right to claim compensation is confined to cases where one co-sharer appropriated the common land by excluding and ousting the other co-sharer from the enjoyment of his proper share in it; or, in other words, where he brought into his own use the entire land in defiance of the claim of his co-sharer, This view was adopted by the learned Judge of this Court in Shiva Narain Mahton v. Chandra Sekhar Prasad Singh AIR 1933 Pat 616. The attention of the learned Judge in the Court below was drawn to the various decisions above referred to, but he held that in this particular case the appropriation of the entire land by the defendant was in defiance of the right of the plaintiff and in spite of her. James, J. in the Patna case held that a co-sharer is not entitled to compensation where the other co-sharer has used the land without opposition or resistance from the former. In this case the learned Judge in the Court below says as follows:

There is oral evidence on behalf of the plaintiff to the effect that in the month of Poos 1337 Fasli on her behalf the employees of the defendant were asked to divide produce of her share in the bakasht lands, but that was not done, and in those circumstances demand for partition of the plaintiff's one anna share in the bakasht land was made in the month of Jeth or Asarh 1337 Fasli. I accept that evidence as correct. In view of that position and my finding on point No. 4, in my opinion the defendant since Asarh 1337 Pasli held possession over the bakasht lands in defiance of plaintiff's claim thereto and to her exclusion from the same.

3. In view of this finding there is no merit in the contention of the petitioner. It was, however, argued on his behalf that this finding is not supported by the evidence on the record, because the oral evidence shows that the demand for partition was made from the amlas of the defendant and not from the plaintiff, and that the amlas were not in a position to accede to the claim for partition made by the plaintiff and therefore there was no resistance to the claim of the plaintiff by the defendant. In my opinion, the claim for partition of bakasht was not a claim for out and out partition of the village. What the plaintiff really wanted, and which has been held to be a fact by the Court below, was that there should be such an arrangement between the parties that both of them might cultivate their proportionate area separately. The village amlas must be held to be authorized to make this arrangement. It was not the duty of the plaintiff to follow the defendant wherever he might have been in order to obtain his right from him. If the amlas of the defendant in spite of the demand of the plaintiff cultivated the entire area, the defendant is answerable for this act of his agents

whereby the plaintiff was excluded. I reject this application with costs: hearing fee one gold mohur.