
(1941) 12 PAT CK 0021

In the Patna High Court

Mt. Janakdulari Kuer and Others

APPELLANT

Vs

Meghan Teli and Others

RESPONDENT

Date of Decision : 01-12-1941

Acts Referred:

Estates Partition Act, 1897 — Section 81

Citation : AIR 1942 Patna 310

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This appeal is by the plaintiffs and arises out of a suit which they instituted against the respondents seeking to eject the latter from the land in dispute, or for assessment of fair and equitable rent in respect of the land. Both Courts have dismissed the plaintiffs' suit and their decision with regard to the question of ejectment is not challenged in this appeal. It is, however, contended that the plaintiffs are entitled to assessment of rent. The plot in dispute formed a part of a holding, which was recorded in survey as khata No. 171. This holding belonged to one Somar Mushahar, a settled raiyat of the village, and consisted of three plots. In the khatian two of these plots Nos. 2469 and 2459 are recorded as belagan dih and the third plot No. 2502 has been recorded as rent paying. At the foot of the entry the area of belagan land is stated and the amount of the rent payable in respect of the remainder of the land is stated with its area. In 1927 or so, Somar Mushahar transferred a part of plot No. 2459 to the respondents. Subsequently, there was a Collectorate partition among the cosharer proprietors, as a result of which plot No. 2459 was separated from the remainder of the holding and constituted into a separate holding No. 2459-3727. This latter plot was allotted to the patti of the plaintiffs-appellants and it is in respect of this plot that the plaintiffs claim to be entitled to have rent assessed.

2. On behalf of the defendants it is contended that all three of the original plots constituted one holding and that as rent was payable in respect of this holding the landlords are not now entitled to ask the Court to assess rent. The entry in

the record of rights, however, to my mind does not mean that the rent which is shown as payable in respect of the third of the original plots is rent payable in respect of the holding. Had that been so, there would have been no object in putting the word "belagan" against plots Nos. 2469 and 2459, or (stating at the foot of the entry the area of these two plots and that that area was belagan.

3. The next question that arises, therefore, is that with regard to the meaning of "belagan." It is conceded that the word does not necessarily denote a rent-free grant, but may merely mean that rent had not yet been agreed upon or assessed. The right of the plaintiffs appellants must, therefore, turn on the question of onus, that is to say, on whom does the burden lie of proving that this land is assessable to rent, or is not assessable to rent, as the case may be. In *Jagdeo Narain v. Baldeo Singh* AIR 1922 P.C. 272, the Privy Council held that when a landlord has proved that a parcel of land, which is claimed to be held rent-free, is within his regularly settled mahal, it lies upon those who so claim to show that they have been relieved of the obligation to pay rent either by contract or by some old grant recognized by Government. In this case the defendants did not plead a contract or an old rent-free grant. In the same case it was held that the presumption of correctness attaching to an entry in the Record of Rights is insufficient for the purpose of proving that the landlord has no right to have rent assessed on land which he has proved to be within his zemindari. This decision was applied by a Bench of which I was a member in *Kameshwar Singh Bahadur Vs. Shaikh Sakhawat Ali and Others*, . That also was a suit for a declaration that the land in suit was liable to assessment of fair rent. In the Record of Rights the land was recorded as belagan, and it was contended that the onus lay on the landlords to rebut the presumption of correctness attaching to this entry; and this contention was negatived, and it was held that the onus was on the defendants to show that they had been relieved of the obligation to pay rent and to establish their right to a rent-free grant.

4. The learned advocate for the defendants-respondents, however, contends that the part of plot No. 2459 which was allotted to the takhta of the plaintiffs must be regarded as subject to the same incidence as holding No. 171 was subject to, before the batwara. He refers to *Khublal Singh Vs. Ishri Prasad*, . In that case, by arrangement among the proprietors, different portions of the estate were in possession of different proprietors. Under one set of proprietors, there was a tenant who had a holding consisting of ten plots. He was dispossessed from one of these plots by his landlords. The civil Court held that this dispossession entitled him to suspend the rent of the whole holding. Subsequently there was a Collectorate partition in the course of which the holding was split up, and two of the plots were allotted to the patti of the plaintiff, who sued for the rent of those two plots. The tenant pleaded that he was entitled to suspend payment of the rent, and this plea was upheld. The ratio decidendi was that prior to the batwara it was by arrangement among the landlords that the holding fell within the takhta of the cosharers who had dispossessed the tenant, and these cosharers thus represented the entire body of landlords who were all benefited by the

conversion of the land into bakasht. It was pointed out that a rent suit on the basis of the batwara was thus a matter between an innocent tenant and a landlord who had benefited by the dispossession which had entitled the tenant to suspension of rent, and that it would not be unfair if the bar of suspension were to continue to apply to all the plots of a tenant's old holding in whichever pattis they may have fallen as a result of the batwara. The facts of that case have no resemblance to the facts of the present case. Here, as I have already said, the entry in the record of rights does not show that any rent was payable in respect of the entire holding, but that two of the plots constituting the holding were belagan, and in the absence of evidence showing that belagan was intended by the survey authorities to indicate a rent-free grant, or oral evidence showing that the defendants are entitled by a contract or grant to hold the land free of rent, the plaintiffs, in my opinion, are entitled to assessment. The batwara officer in exercise of his powers u/s 81, Estates Partition Act, split up the holding and allotted a part of the original holding to the plaintiffs as a separate holding, and until the defendants prove that this holding was part of a holding which they are entitled, by grant or contract, to hold rent-free the landlords are entitled to rent in respect Of it.

5. The decision of the Courts below must, therefore, be set aside, and the case sent back for assessment of fair and equitable rent. In view of the fact that the plaintiffs failed in their claim for ejectment the order for costs, will be that each party should bear its own costs in the Courts below, but the plaintiffs will be entitled to their costs in this Court.