

(1917) 04 PAT CK 0009
In the Patna High Court
Case No : S.A. No. 637 of 1916

Mt. Wajihunnissa Begum

APPELLANT

Vs

Fakira Mahton

RESPONDENT

Date of Decision : 25-04-1917

Acts Referred:

Citation : (1917) 04 PAT CK 0009

Final Decision : Dismissed

Judgement

Chamier, C.J.—This was a suit by the appellant for possession of some land known as Pushta Oleudez (apparently a corruption of Hollandaise) in one of the Mohallas of the City of Patna. It appears that on part of the land there stood at one time a house and out-houses but they fell down many years ago and since 1285 F, at all events the whole of the land now in question has been under cultivation.

2. The appellant's case was that at first a portion and subsequently the whole of the land was let by them in thika to different persons quite temporarily in order that they might grow vegetable thereon, that the thikadars were forbidden by express conditions in their thikas to settle the land permanently with any one, that" the last thikadar was Mahomed Askari who gave up possession in 1318 F., and that the respondent, who has built a kutcha house on part of the land and is cultivating the rest of it, prevented the appellant from taking possession. Hence this suit. The appellant says that the land is homestead land and that even if it was settled with the Respondent by one of the thikadars the respondent has no right to retain possession.

3. The respondent's case was that he had a right of occupancy in the land which was his ancestral holding and he pleaded that even if he failed to establish a right of occupancy in the land, he was a non-occupancy raiyat of the same and not liable to be ejected except on one or other of the grounds specified in section 44 of the Bengal Tenancy Act.

4. The Courts below have agreed in dismissing the suit.

5. In this Court it was at first suggested that Patna City had been excluded altogether from the operation of the Bengal Tenancy Act. But the suggestion was abandoned.

6. It was next contended that Patna City is not a village and, therefore, with reference to sections 3(10), 20 and 21: of the Act the defendant could not be held to be an occupancy raiyat of the land. It appears to me to be unnecessary to decide this question, for if the Respondent is, as I hold, a non-occupancy raiyat of the land the suit must fail.

7. It was contended that the Respondent was not a non-occupancy raiyat inasmuch as the Bengal Tenancy Act does not apply to homestead land or to land not used for agricultural or horticultural purposes, there appears to be no force in this. If the land was ever homestead land within the meaning of that expression as used in the Act it ceased to be so before it was let to the Respondent or his predecessors and the land has been let for cultivating, i.e., for an agricultural purpose, and both cereals and vegetables have been grown on it for many years. The growing of vegetables is admitted by the appellant and the Sub-ordinate Judge found traces of (sic) having been grown on it when he inspected the land.

8. In the last resort it was contended that the land was the proprietor's private land (zerait, nij, sir or khamat) within the meaning of section 116 of the Act and, therefore, section 44 did not apply to it. No such case seems to have been put forward in the Court below and there appears to be no force whatever in the contention. The land was at one time a building site but many years ago, long before the appellant acquired it, the buildings fell down and the proprietor of the time let it out as ordinary agricultural land. It would be absurd to call the land zerait, nij sir or khamat.

9. As regards that portion of the land on which the Respondent's house stands there are concurrent findings of the Courts below that by the custom the Respondent is entitled to retain possession. As regards the rest of the land, the appellant has failed to show that the thikadars of the land had not power to settle it with tenants for cultivation. It appears to me that the Respondent is at least a non-occupancy raiyat of it, and I hold that the suit was rightly dismissed as none of the grounds stated in section 44 of the Act have been so much as suggested. I would dismiss the appeal with costs.

Sharfuddin, J.

10. I agree.