

(1930) 05 PAT CK 0006
In the Patna High Court

Muchi Ram Bagal

APPELLANT

Vs

Balaram Bhumij

RESPONDENT

Date of Decision : 14-05-1930

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 46(4)

Citation : AIR 1930 Patna 562

Hon'ble Judges : James, J;Chatterji, J

Bench : Full Bench

Judgement

James, J.—In the Record-of-Rights which was prepared under Chap. 12, Chota Nagpur Tenancy Act for Man-bhum District in 1911 the name of Khudu Bagal was recorded as under-raiyat of Balaram Bhumij with rights of occupancy (korfa). Khudu Bagal died in 1920. Balaram Bhumij after serving notice to quit on his son instituted a suit for his ejectment on the ground that the right of his father to occupy this holding had ceased at his death.

2. The suit was dismissed by the Munsif of Purulia on the ground that the plaintiff ought to have proceeded by means of an application before the Deputy Commissioner u/s 46, Chota Nagpur Tenancy Act. His decision was set aside on appeal by the Subordinate Judge of Purulia, who remanded the case in order that the Munsif might decide whether by custom or usage prevailing in that part of the country the son of an under-raiyat who had acquired occupancy rights in his holding would himself succeed to the occupancy right. The Munsif after taking evidence, found that there was no custom or usage of that kind prevailing in that part of the country and returned the record. On the return of the record the case was taken up by the Additional District Judge. The Additional District Judge held that the suit was within the jurisdiction of the civil Court; and that since there was no custom or usage by which the son of an under-raiyat was entitled to succeed to the holding which his father had occupied, the suit must be decreed. The defendant appeals from that decision.

3. Mr. S.C. Mazumdar on behalf of the appellant argues in the first place that the

civil Court had no jurisdiction to try this suit. He argues generally that a raiyat if he desires to eject an under-raiyat must proceed by an application u/s 46(4), Chota Nagpur Tenancy Act. If the plaintiff had made an application u/s 46(4), Chota Nagpur Tenancy Act, it would have been necessary for him to show that he had himself by a lease express or implied placed Khudu Bagal's son in possession of the holding after the death of his father. Mr. S.C. Mazumdar points out that in the notice which Balaram Bhumij served on Muchi Ram Bagal he described him as his korfa raiyat; and he argues that he thus recognized the defendant's status as under-raiyat and admitted by implication that he had granted a lease.

4. The learned District Judge has remarked that the defendant was a mere trespasser on the land of his father and no notice to eject him was necessary at all. I do not consider that the mere fact that the plaintiff misdescribed the defendant as korfa raiyat in his notice, although he was actually a trespasser, can exclude the jurisdiction of the civil Court and bring the case within the provisions of Section 46, Chota Nagpur Tenancy Act. If the plaintiff had attempted to apply the provisions of Section 46 of the Act the defence would have been taken that no lease express or implied was ever taken by the defendant. It cannot I think be held that where no lease express or implied has been granted, a landlord can, by merely issuing a notice wherein the occupier is described as an under-tenant, exclude the jurisdiction of the civil Court, and bring a case which would not otherwise be within the jurisdiction of the Deputy Commissioner within the provisions of Section 46(4). It is clear from the findings of the Courts below that the defendant was a trespasser from the time when his father died, and that the suit was properly instituted in the civil Court.

5. Mr. Mazumdar argues in the second place that the occupancy right of an under-raiyat ought to be regarded as heritable. His argument amounts to this: that because the rights of an occupancy raiyat as defined by the Chota Nagpur Tenancy Act and the Bengal Tenancy Act pass on intestacy to the heirs of the original tenant, an under-raiyat who has acquired the right which is described as dakhalkar must be deemed to have acquired a heritable right similar to that of the statutory occupancy raiyat. Heritability is a right which has been attached by legislation to the tenure of an occupancy raiyat in Bengal, Bihar and Orissa, but it is not a necessary condition attaching to the enjoyment of an occupancy right for life.

6. The question of whether an under-raiyat who acquires occupancy right acquires also the rights of an occupancy raiyat as defined by the Tenancy Acts depends entirely on local custom. It is only by the operation of local custom that an under-raiyat can acquire a right of occupancy for life; and in order to ascertain what are the incidents attaching to that right of occupancy, it is necessary to ascertain what is the local custom on the point. The Courts below have found that in the neighbourhood in which this holding lies there is no custom by which an under-raiyat's rights pass by inheritance. The question of

whether there is such a custom or usage or not is a question of fact. The defendant gave evidence in order to prove the custom, which was not found to be satisfactory by the Courts below; and the finding of fact that there is no such custom is a finding which is binding on this Court in second appeal.

7. Mr. Mazumdar argues in the third place that the suit is barred by limitation. It appears that in 1912 the plaintiff ejected Khudu Bagal together with a mortgagee from this holding, and they, instituted a suit u/s 9, Specific Relief Act, for recovery of possession. The Munsif found that Khudu Bagal had been dispossessed, and he accordingly gave a decree directing that he should be restored to possession. In that plaint Khudu Bagal asserted that he held a permanent occupancy right (chirasthai jamai swatta). The Court in the case u/s 9, Specific Relief Act, was not concerned with the exact status of the parties, but Mr. Mazumdar argues that this was an open assertion of right, and that thenceforth Khudu Bagal must be held to have been holding adversely as a person possessing a permanent occupancy right. It is not clear how the plaintiff could have prevented Khudu Bagal from asserting this right. Khudu Bagal was an undertenant with a right of occupancy, as he has been described in the Record-of-Rights.

8. If the plaintiff had instituted a suit to eject him from the holding, the suit would have failed, since Khudu Bagal did admittedly hold occupancy right for his life. It cannot be held that the plaintiff was bound to institute a suit u/s 42, Specific Relief Act, for a mere declaration that the permanent occupancy right of Khudu Bagal was limited to his life. It may be conceded that Khudu Bagal had a permanent occupancy right. The question in the present case is whether the permanent occupancy right of Khudu Bagal was permanent in the sense that it did not come to an end with his life. The duty of the Court in this case was to ascertain whether the permanency of this occupancy right extended beyond the lifetime of Khudu Bagal by local custom or usage; and the Court after considering the evidence has decided on the question of fact against the appellant.

9. I agree with the lower appellate Court that this suit was not barred by Limitation because after the claim to permanent right had been set up the plaintiff had not open to him any remedy by way of a suit in which he could claim consequential relief. The plaintiff might perhaps have instituted a suit u/s 42, Specific Relief Act; but he is not bound to sue until his real cause of action arises. I do not consider that it can be held that limitation began to run against the plaintiff until the question really arose of whether the permanent right enjoyed by Khudu Bagal was heritable or not. I would affirm the decision of the lower appellate Court and dismiss this appeal with costs.

Chatterji, J.

I agree.