

(1933) 12 PAT CK 0027
In the Patna High Court

Musammat Bibi Fasiunnissa

APPELLANT

Vs

Mangra Dhobi and Others

RESPONDENT

Date of Decision : 04-12-1933

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 177

Citation : AIR 1934 Patna 121 : 148 Ind. Cas. 757

Hon'ble Judges : Wort, J; Mohammad Noor, J

Bench : Division Bench

Judgement

Wort, J.—This was the plaintiff's appeal in an action, for rent tender the. (Jhota Nagpur Tenancy Act. It appears that the plaintiff was the Khorposhdar having purchased the tenure from the original grantee. When the written statement came to be filed it was pleaded by the defendant tenant that he paid the rent for the years in suit, namely, 1983 and 1984 Sambat to the original proprietor in the following circumstances. The Khorposh grant appears to have been one to the original grantee and his male heirs and it was stated that the last male descendant of the original grantee having died during one of the 3 years in suit the proprietor resumed the village. It was in those circumstances that it was averred by the defendant that the rent had been paid to the original proprietor and under those circumstances the learned Judge of the trial Court joined (he original proprietors as third party u/s 177, Chola Nagpur Tenancy Act. At the trial the only substantial question that was inquired into was whether the tenant who had paid the rent to the original proprietor in the circumstances which have stated, did so bona-fide. The case went on appeal to the learned Judicial Commissioner of Chota Nagpur, who affirmed the decision of the trial Court to the effect that the payment had been made bona fide, thus dismissing the plaintiff's suit for rent. In this Court two questions, which do not appear to have been, inquired into in the Courts below have been argued and in the first place it is contended that the first part of Section 177 has not been complied with. The section is as follows:

When in any suit before a Deputy Commissioner under the Act between a landlord and a tenant, the tenant or a third person pleads that the right to receive the rent of the land or tenure cultivated or held by the-tenant belongs to such third person on the ground that, such third person or a person through whom he Claims has actually and in good faith received and enjoyed such rent before and up to the time of the institution of the suit's.

and then the sub-section goes on to provide that the third person should be made a party to the suit. Now it is contended, as I have said, in the first place that that sub-section is not complied with by reason of the fact that there was no averment in the written statement that the payment by the tenant to the proprietor had been received in good faith. It is true that the written statement of the tenant contained no words such as "in good faith," but in my judgment the intention of the legislature in enacting this part of the section was that it would be necessary to join as a third party or intervenor a person who from the circumstances alleged could be shown to have received the payment in good faith; in other words it is not so much the use of the words "in good faith" that become necessary under the section but such facts as would indicate *prima facie* that the payment had been received in good faith were necessary. It is my judgment, therefore, that point falls. At this stage of the matter it must be said that the section appears to contain an anomaly which is pointed out by Mr. Khurshaid Husnain and upon which he bases his argument. The words which I have read quite clearly indicate that the pleading to the effect that payment was received in good faith is sufficient to entitle the Court to join that person who receives the payment from the tenant. No provision is made, in the section for any inquiry even of a summary character or otherwise into the allegation. It is this upon which Mr. Khurshaid Husnain bases the other part of his argument on this branch of the case. He contends that although the section makes no provision for an inquiry, an inquiry is essential. The short answer to that argument is the one which I have stated that there is no such provision in the section and although there does appear on the face of it (?) to be an anomaly, the question which had to be determined in the presence of the third party is the question which was inquired into by the learned Judges in the Courts below namely, whether the payment had been made in good faith by the tenant. That was a decision on facts which cannot be disturbed by this Court in second appeal.

2. Another matter, however, arises on this part of the case. The years in suit, as I have said, were 1983 and 1964 *tambat*. There appears to be some mistake in the written statement of the parties because the proprietor himself states in his pleading that the original Khorposhdar died in the year 1984 *Sambat*, although the resumption which took place and which is stated in the pleadings was in the year 1983. The date of the death of the original Khorposhdar appears to me to be a mistake for the year 1983. But on any showing; the right to resume and the date of the resumption took place after a period of six months had elapsed of the first year for which rent is claimed. Therefore, upon any view of the case it could not have been pleaded that the payment was received for those six months in,

good faith by the proprietor and it seems to me the justice of the case demands that the plaintiff in this action is at least entitled to rent for that period, that is to say, the plaintiff will be entitled to two quarters" lent for the year 1983. With that variation of the decree of the Court below this appeal must be dismissed. In the circumstances there will be no order for the costs of this Court.

Mohammad Noor, J.

3. I agree.