

(1921) 01 PAT CK 0020
In the Patna High Court
Case No : Appeal No. 1130 of 1920

Nand Lal Sahu

APPELLANT

Vs

Tikait Shrinivas Hukum Singh Deo

RESPONDENT

Date of Decision : 12-01-1921

Acts Referred:

Citation : (1921) 01 PAT CK 0020

Final Decision : Dismissed

Judgement

Coutts, J.—This appeal arises out of suit brought by Tikait Shrinivas Hukum Singh Deo through the Manager of the Encumbered Estates for resumption of tola Karamtoli of village Barpani on the ground that it is a service tenure, and that the present holder of the tenure has refused either to render services or to give up possession of the tola.

2. The suit was dismissed by the Court of first instance on two grounds : (1) that the tenure was not a service tenure and that no particular service attached to the tenure, and (2) that the suit was barred by limitation as the service, if any, ceased to be performed in 1905 and the right to resume accrued with the non-performance of service which was more than 12 years before the suit was instituted. On appeal to the learned Judicial Commissioner it was held that the tenure was a service tenure, and that although service for the tenure ceased to be rendered in 1905, the suit was not barred as there had been no claim or refusal of service until the year 1915. It appears that the tenure was granted in the year 1893 by the father of the plaintiff to two brothers Sonu Singh and Sukru Singh and the grant was by an amalnama which set forth that it was a hereditary grant on condition of service. The grant was to continue as long as the grantees or their heirs were present for service every day.

3. The finding that the tenure is a service tenure is a finding of fact with which we cannot interfere in second appeal; and it has not been suggested by the learned Vakil for the appellant that we should interfere with this finding. But he contends that in the year 1905 the character of the tenure changed and that

after that date it was no longer a service tenure; consequently the suit having been brought in 1918, it is barred by limitation.

4. The history of the tenure is that it remained in possession of Sonu Singh and Sukru Singh until the year 1905 when it was put up for sale by the manager of the estate for arrears of rent and was purchased by one Bulaki Singh. Bulaki Singh sold his right to Bala Padha Senapati who sold it to the defendant in the year 1915. These sales were in the form of mukararri leases, but it is admitted on both sides that the transactions were in fact sales.

5. Neither Bulaki nor Bala Padha Senapati obtained mutation of the tenure which continued to stand in the names of Sonu and Sukru. In 1915 the defendant applied for mutation and Sukru Singh and Sonu Singh's son filed a petition refusing to render service and relinquishing the tenure. On these facts it is contended, as I have already said, that in 1905 when the tenure was sold, it changed its character.

6. The service, it is alleged, continued to be rendered by Sonu and Sukru whereas the tenure itself, free from the service, was transferred. It appears that at the sale for arrears of rent the service was described as a service tenure and it is so described in the sale certificate. The character of the tenure was, therefore, not changed by the landlord, and not having been changed by him its service character must remain.

7. For the contention that the character did change reliance has been placed by the learned Vakil for the appellant on *Keval Kuber v. The Talukdari Settlement Officer and Gagubhai Abheangji Talukdar* (1876-77) 1 Bom. 586. That is a case in which rent free land was granted for service to one Jiva Karshan. Jiva Karshan had nothing to do with the land after the year 1834, and it had been sold by him and dealt with by various persons : but so long as Jiva Karshan lived and the service was performed the Talukdar from whom the grant was held had no occasion to require any service from the transferees : Jiva Karshan died in 1853 and it was held that at that time the right to resume accrued : and as the suit was brought more than 12 years from that date it was barred by limitation.

8. This decision so far as it goes, far from assisting the appellant is against him, because it would seem to show that the period of limitation begins not with the date of sale by the original grantee but from the date of the death of the original grantee when service could no longer be performed by him. In the present case there is no suggestion that Sonu Sukru died more than 12 years before, the institution of the suit, so that so far as this case is concerned, it does not assist the appellant.

9. The question, however, remains whether the suit is barred on account of the finding that service ceased to be rendered in 1905. The view of the learned Judicial Commissioner is that it is not barred because there was no refusal or claim of service between 1905 and 1915. In support of this view he has relied on *Komargowda v. Bhimji Keshav* (1899) 23 Bom. 602=1 Bom. L. R. 61 in which

case it was held that the fact that no services were performed does not in itself make the holding adverse. To make the holding adverse there must be a refusal to perform service or a claim to hold the lands free of service.

10. This would appear to be the correct view of the law, and in my opinion the appeal has been rightly decided by the learned Judicial Commissioner.

11. I would accordingly dismiss this appeal with costs.

12. Ross, J.:

13. I agree.