

(1938) 02 PAT CK 0018
In the Patna High Court

Naran Singh

APPELLANT

Vs

Baikunth Singh

RESPONDENT

Date of Decision : 08-02-1938

Acts Referred:

Citation : AIR 1938 Patna 375

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This appeal arises out of an action in which the plaintiff claimed possession of a certain tabedari tenure from which he said he had been dispossessed by the defendant. The plaintiff succeeded in his action and on appeal the judgment of the trial Court was affirmed.

2. The case is one of those examples in which the parties appear not to have appreciated their remedy. The dispossession alleged against the defendant was that he cut earth from the bank of a tank which was the subject-matter of the tenure. That clearly would not give rise to an action for possession but to an action in trespass against the defendant in which the plaintiff would have recovered damages and in which the question of title would have been gone into as it has been gone into in the present action. To have a decree for possession is, as I have indicated, not an appropriate remedy.

3. However, the only question raised in this appeal is whether the defendant was entitled, as a member of the family, to claim an interest in the tenure. That is the case set up. As I understand the argument addressed to this Court on behalf of the appellant, it is that the tenure was in a form of raiyati interest which descended after the death of one of the holders to other members of the family by survivorship.

4. The short answer to the whole case is that the finding of the Judges in the Courts below is that the two brothers were separate. Nothing further need be said although there was a considerable discussion as to the nature of tabedari

tenures, and I need only refer to the decisions of the Privy Council in *Kali Pershad Singh v. Anand Roy* (1888) 15 Cal. 471 and *Durga Prashad Singh v. Trebeni Singh* AIR 1918 P.C. 112. Their Lordships' decision in the first case was that the holder had an absolute power of alienation" and that "an absolute power of alienation forms an integral portion of the ghatwal's right and interest in the ghatwali." I should observe that these tabedari tenures are a form of inferior ghatwali tenures if I may use the expression.

5. In the second case, the decision of the Judicial Committee of the Privy Council was that:

Ghatwali tenure is ordinarily hereditary, the estate descending to such male member of the family as the zamindar approves as competent to perform the duties,

and the important part of the decision for the purposes of this case is that "the member appointed does not hold on behalf of the family, and the other members have no rights in the land while it is in his hands as ghatwal."

6. It is true in this case that there is a suggestion that the holder no longer performs the duties of the tenure, and it is really on that footing that argument was advanced. But in my judgment the nature of the tenure is not altered in this respect by the fact that the services are no longer performed.

7. As I stated at the commencement of my observation, the clear answer to the defendant's claim is that being separate from his own brother he is no longer a member of the joint family.

8. The appeal fails and is dismissed with costs: leave to appeal is refused.