

(1957) 01 PAT CK 0009
In the Patna High Court
Case No : A.F.A.D. No. 1704 of 1949

Natabar Chaudhary and Others

APPELLANT

Vs

Shanker Mahton and Others

RESPONDENT

Date of Decision : 03-01-1957

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104, 114

Citation : AIR 1957 Patna 487

Hon'ble Judges : Rai, J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Sudhir Chandra Ghosh, for the Appellant; S.K. Mazumdar, Balram Kumar Sinha and Awadh Kishore Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—This is a plaintiffs' Second Appeal arising out of a rent suit instituted by them for recovery of rent including cess and interest for the years 1350 to 1353 B. S. in respect of holding No. 19 situate in mauza Harnama. The plaintiffs claimed rent at the rate of Rs. 28/14/- per year. Defendant No. 1 alone opposed the plaintiffs' claim on two grounds, first, that the rent of the holding had been reduced from Rs. 28/14/- to Rs. 14/7/- in a proceeding for reduction of rent under the Chota Nagpur Tenancy Act, and, second, that the rent for the years 1350 to 1352 B. S. had been deposited in Court to the credit of the plaintiffs.

2. The plaintiffs impugned the validity of the reduction of rent and contended that the order of the Rent Reduction Officer reducing the Jama was void and without jurisdiction, as the 16 annas landlords were not represented in the proceeding.

3. The learned Munsif overruled the contention of the plaintiffs and held that all the landlords were parties to the rent reduction proceeding and that the reduction was made in their presence. He further held that the rent for the three

years, from 1350 to 1352 B. S., had been deposited in Court and that the deposit was valid. He accordingly gave the plaintiffs a decree at the reduced Jama in respect of one year only, namely, 1353 B. S., with proportionate costs and interest at 6/1/4 per cent, per annum.

4. The plaintiffs-landlords appealed from the judgment of the learned Munsif, and the learned Judicial Commissioner upheld the findings of the learned Munsif and dismissed the appeal with costs.

5. The plaintiffs have now come in Second Appeal.

6. The contention which has been overruled by the Courts below has been reiterated before us. Mr. Sudhir Chandra Ghosh appearing for the appellants contended that the order reducing the rent was not binding on the plaintiffs, since they were not parties to the rent reduction proceeding. His argument is that there is nothing on the record to show that notices of the proceeding were served on all the plaintiffs personally. He invited our attention to the notice, exhibit 2, and urged that it was issued to and served only upon Sasadhar Chaudhary, plaintiff-appellant No. 6. This is not quite accurate.

The notice shows that it was issued not only to Sasadhar Chaudhary but also to "others." The word "others" naturally implies other landlords meaning thereby the other plaintiffs. The report of the peon shows that he met all the persons mentioned in the notice and informed them of the nature of the action. The notice, therefore, does not support the contention of Mr. Ghosh, at all. Apart from this, it has been established in this case that the rent has in fact been reduced to Rs. 14/7-. Now, the defendants are armed with the legal presumption that the order was regularly passed. Section 114 of the Evidence Act read with Illustration (e) in substance provides that where any judicial act is done in a manner substantially regular, a presumption in law arises that all formal requisites for its validity were complied with. There is no presumption in law in favour of irregularity, and it is well-settled that in such a case the party alleging irregularity must prove it by cogent evidence.

In this case the plaintiffs have failed to prove non-service of notice upon the other landlords. On the contrary, there are circumstances on the record which establish the service of the notice on all the plaintiffs. The application for reduction of rent, exhibit 1, shows that all the landlords were parties to the rent reduction proceeding. The notice (exhibit 2) shows that it was issued to Sasadhar Chaudhary and others. It is in evidence that barid Baran Chaudhary (plaintiff-appellant No. 2) was present at the time of the hearing of the application of the tenants for reduction of rent. He raised no Objection at that time. P. W. 1 is admittedly the agent of all the plaintiffs for the last 20 years, and he admitted that he was present when the rent reduction case was heard. Further, the plaintiffs had realised rent from the tenant-defendants at the reduced Jama.

Plaintiff No. 5 accepted rent at the reduced jama for 1347 B. S. (vide exhibit A(I)). Plaintiffs nos. 2 and 6 realised rent for two years for 1348 and 1349 B., S.

at the reduced rental (vide exhibits A(2) and A(3)). All the plaintiffs are joint in property and live in the same compound. No motive has been alleged for fraudulent suppression of the notice. When Barid Baran Chaudhry and Sasadhar Chaudhry had received notices, so much so that the former was present at the time of the hearing of the case, there is no reason to suppose that notices were not served on the other plaintiffs, especially, when the notices were served at one and the same time. Mr. Ghosh contended that neither P. W. 1 nor Barid Baran Chaudhry (plaintiff No. 2) was an authorised agent to represent all the plaintiffs at the time of hearing. This is really not the point.

They may or may not be a representative of all the plaintiffs, but the fact is that they were present at the time of the hearing of the case and that they had full knowledge of the rent reduction proceeding. This is the circumstance which falsified the allegation of non-service of notice on the other plaintiffs. It must be held, therefore that all the landlords were parties to the proceeding and notices were served upon them. There is, therefore, no good reason to re-verse the findings of fact arrived at by the Courts below. The contention of Mr. Ghosh must fail.

7. There is no merit in this appeal, and it is accordingly dismissed with costs.

Rai, J.

8. I agree.