
(1929) 05 PAT CK 0001
In the Patna High Court

Pandea Munda

APPELLANT

Vs

Ladura Munda

RESPONDENT

Date of Decision : 22-05-1929

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 74A, 74A(1), 74A(2)

Citation : AIR 1929 Patna 436 : 124 Ind. Cas. 82

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

Bench : Division Bench

Judgement

Wort, J.—This is an appeal against a decision of the Subordinate Judge of Banchi affirming a decision on the Munsif in a suit in which the plaintiff prayed for a declaration that the appointment made by the Khas Mahal Deputy Collector and confirmed by the Commissioner on 1st August, 1922, was a valid and proper one, and that the subsequent recommendation and approval of the Deputy Commissioner was invalid and without jurisdiction, also for a declaration that the plaintiff was entitled to be restored to his former position of the Munda of the village and other relief. The suit succeeded in both the Courts below, the matter in controversy, as indicated, being a claim to the village headmanship in the Village Garamara.

2. It appears that after the death of the village headman an application was made to the Khas Mahal Deputy Collector which was confirmed by the Deputy Commissioner on 16th November 1921 by which the plaintiff was appointed the village headman. A subsequent application was made to the Deputy Commissioner and he declined to interfere with the order which was already made. Thereupon certain villagers instituted a case on 14th October, 1922, before the Sub-Divisional Officer, Khunti, to set aside the plaintiff's appointment and the order made by the Sub-Divisional Officer was confirmed by the Deputy Commissioner on 14th December, 1923, by which the defendant, the appellant before us, was appointed as the Munda of the village. The application which was made to the Sub-Divisional Officer is stated to have been made u/s 74-A, Chota

Nagpur Tenancy Act; and, in any event, from the order sheet of the Deputy Commissioner, that appears to be the case. The suit was for a declaration that order was made without jurisdiction, as I have already said, and for consequential relief. The Subordinate Judge decided on appeal that the order of the Deputy Commissioner was made without jurisdiction for the reason that the application which was made u/s 74-A was one which in the circumstances was not maintainable.

3. Now, it appears that in some cases with the office of the village headman there is held a tenancy in some plot or plots of land; in other cases the office is held without any land in connexion therewith. The case which we have before us is one of the latter. The Subordinate Judge has held that that being the case no application is maintainable u/s 74A, Chota Nagpur Tenancy Act, for the reason that upon a proper construction of the section applications therein contemplated were referable only to those headmanships which were held in conjunction with land, that is to say, that some form of tenancy of a plot or plots of land subsisted with the office of the village headman. The first point, therefore, for our determination is whether the construction placed upon the section by the Subordinate Judge was the correct one. I need not set out the section in extenso; but it is sufficient to say that both Sub-Section 1 and Sub-Section 2, Section 74-A, do create a very considerable difficulty in connexion with the point which is raised in this appeal. I refer to the first clause of Section 74-A which reads:

Where a tenancy which in accordance with custom is held by village headman, has for any reason been vacated.

and then come to Sub-section (2) "such application may be made notwithstanding that a person is in possession of the land of the tenancy, or part thereof, under the authority or with the consent of the landlord."

4. In both these sub-sections it is argued that what is dearly contemplated is the actual possession of a plot or plots of lands in connexion with the office of headman. The definition of tenants is referred to in Sub-section (26), Section 8, of the Act which runs as follows:

Tenant means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person.

5. "Tenancy," is not defined in the Act; but it is urged that tenancy can only be that right which a tenant possesses and as a tenant is a person who holds land, consequently, the word "tenancy" must refer to land. There is difficulty, however, in accepting that construction. Sub-section (1), Section 74-A, proceeds to say:

Where a tenancy which in accordance with custom is held by a village headman, has for any reason been vacated, any three or more tenants holding land within the said tenancy or the landlord may apply to the Deputy Commissioner to determine the person who in accordance with custom should be village headman

entitled to hold the tenancy.

6. If the contention urged by the respondent is correct, being the construction placed upon the section by the Subordinate Judge, then what is contemplated by the words to which I have referred is that the tenants mentioned therein must be the tenants, not any three tenants of the village over which the headman rules but three tenants of the land which he holds in connexion with the headmanship. It seems that would be straining the language of the section and, at any rate putting a construction upon it which it is difficult to hold was intended by the Legislature. The real difficulty is, as I have already pointed out, that which arises from the first clause of the sub-section "where a tenancy which in accordance with custom is held by a village headman."

7. The expression used by the Legislature is not particularly happy, if what was intended was that the section was applicable to both classes of village headman having regard to the fact that the word "tenancy" has a technical meaning and that no definition being given in the Act, and by the ordinary canon of construction it must be deemed to have that technical meaning. But in my judgment, after a careful perusal of the section and particularly of Sub-section 3, what was intended by Section 74-A was to deal with all applications whether the village headmanship was held in conjunction or not in conjunction with land. It seems to me that Sub-section (3), Section 74-A, throws a considerable light upon the meaning of the section. That sub-section reads:

On receiving such applications the Deputy Commissioner shall, after giving notice in the prescribed manner to the landlord, the person, if any, referred to in Sub-Section 2, the heirs of the last village head-man the tenants and such other persons, if any, as he considers should be a party to the proceeding make such enquiries as appear necessary, and determine the person who in accordance with custom should be the village headman.

8. The last few words seem to me to explain the one expression in the first sub-section which stands in the way of the view which is advanced on behalf of the appellant. That view, as I have already stated, is that subsections refer not only to those cases in which, the headmanship is held in conjunction with land but also to those in which the land is not so held. Now, on one construction, and that which is advanced on behalf of the respondent, it would appear that the word "tenancy" in Sub-Section 1, Section 74-A is qualified by the words following "which in accordance with custom is held by a village headman." It would, therefore, appear that two distinct matters are referred to, first, the tenancy and then the "village headman was the person which in accordance with the custom was the holder of the tenancy," but it is clear that by the words used in Sub-section (3) that what it was intended to express was that the village headmanship is held in accordance with the custom of the village. When once that aspect of the case is taken, it seems to me that it also becomes clear that the Legislature did not intend to limit the section to one class of case. If that be so, and in my judgment it is, the decision of the learned Subordinate Judge in so

far as it depends upon the question of the construction of Section 74-A is wrong and it cannot be said that the Deputy Commissioner in making his order dated 14h December, 1923, had no jurisdiction.

9. In so far as any question of law may arise in this case, it seems to me that the case is disposed of. But it is argued that the learned Subordinate Judge had no jurisdiction to go into the merits of the case. If the view that is placed before us by the appellant of Section 74-A(1) is right, then it is perfectly clear that the Munsif in the first place had jurisdiction to entertain the suit u/s 74-A(5). It is clear, and there is no dispute about this matter, that this suit was instituted within one year as laid down by the section. On the other hand if the view of the respondent of the section is the correct view, then it seems to me that any right which the plaintiff had in the suit is limited by the provisions of Section 258. That section provides that no suit should be entertained save as expressly provided in the Act. The proviso to that section is that such a suit may be made on the ground of fraud or want of jurisdiction. It is contended that if Section 74-A is upheld, then the suit which is before us becomes a suit within the exception of Section 258 and,, therefore, the Court's jurisdiction is limited to the declaration that the last order made by the Deputy Commissioner was without jurisdiction, It becomes unnecessary, however, to decide that somewhat difficult point by reason of my decision on the main question, that is to say, my decision on the true construction of Section 74-Ai Arising from that decision the plaintiff was entitled to prosecute his suit under Sub-section (5), Section 74-A, therefore, the Subordinate Judge had jurisdiction to enter into an investigation of the merits of the case.

10. It is argued on behalf of the appellant that the decision on the merits is wrong in law. The learned-Subordinate Judge in discussing this question has discussed three questions which appear to have been advanced before him. The first question was whether or not the defendant had sasan in the village in the question. It is argued that in coming to the conclusion at which he arrived in this connexion, he has indirectly come to a conclusion which is contrary to the Record of Rights. It is said that by coining to the conclusion that the defendant had sasan in the village he indirectly decided that they were not khuntkattidars of the village. In my judgment that argument has no foundation, and the argument must fail. The next point which the learned Subordinate Judge dealt with was the contention by the defendant, the appellant before him, that the Munda of the village was appointed from the clan or Koli of the defendant. He has come to the conclusion on the facts contrary to the defendant's contentian and it seems to "me upon materials which were sufficient. The last and the final point which he has discussed in this case was whether or not the majority of the villagers were in favour of the defendant's candidature. On that point, which is obviously a question of fact, the learned Subordinate Judge also came to a conclusion against the defendant. In my judgment so far as the merits of the case are concerned this appeal fails. It succeeds to this extent that the learned Subordinate Judge was wrong in law in deciding that the Deputy Commissioner

had no jurisdiction, but generally the learned Subordinate Judge having decided in favour of the plaintiffs on the merits, the appeal must fail and is dismissed. with costs.

James, J.

11. I agree.