
(1921) 07 PAT CK 0019
In the Patna High Court

Pareshram Deogharia and Others

APPELLANT

Vs

Maharaja Pratap Udai Nath Sahi Deo

RESPONDENT

Date of Decision : 27-07-1921

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 64(3), 67

Citation : AIR 1921 Patna 506 : 63 Ind. Cas. 783

Hon'ble Judges : Macpherson, J; Coutts, J

Bench : Division Bench

Judgement

Macpherson, J.—The plaintiff is the Zamindar of village Angara in the District of Ranchi, and the defendant, now represented by the first three appellants, was the jagirdar of village Hahe lying immediately to the east of Angara. During the Survey operations a tract of land was the subject of a boundary dispute between the two villages, and the decision of the Survey Authorities in February 1903 was that it lies within Mauza Angara. Accordingly it is entered in the Record of Rights as a part of Angara in the Zamindari of the plaintiff and the cultivated portions of it are shown as held by raiyats under him. In March 1915 the defendants Nos. 2 to 5, admittedly authorized to do so by the jagirdar of Hahe, began to cut down trees and reclaim land in some of the jungle plots of the area. The plaintiff's servant thereupon brought a criminal case against the jagirdar, but it was dismissed for default in judgment. In February 1918 plaintiff, alleging that the defendants emboldened by this dismissal had set up a claim to, and taken possession of, the entire area previously in dispute, and had cut down trees and re-claimed land in the jungle plots instituted the suit out of which this second appeal has arisen, for direct possession of the land in suit, including the jungle, and for Rs. 100 as damages in respect of the trees cut and Rs. 30 on account of the produce taken by the defendants from the re-claimed land in 1912 to 1914 Sambat.

3. The defendants in a joint written statement pleaded that the land was within defendant No. 1's village of Hahe, that the first defendant was in adverse

possession of the area in suit and: that the defendants Nos. 2 to 5 had prepared korkar lands within the jungle plots in suit and having thereby acquired a right of occupancy, could not be ejected therefrom.

4. The Court of first instance decreed the suit so far as the Zemindari interest is concerned and also gave the plaintiff khas possession of the jungle plots Nos. 626, 661 and 941 and allowed the damages claimed and Bs. 24 as value of produce. In appeal the Officiating Judicial Commissioner rejected the contentions that the lands lay in Hahe, and that even if they did not lie in Hahe, the orgirdar of Hahe was in adverse possession for the requisite period, held with regard in the claim of the tenants-appellants to korkar right. Und, therefore, occupancy right in the three plots mentioned, that they could not acquire occupancy rights under the plaintiff, inasmuch as they are not tenants of Angara, do not admit the plaintiff as their landlord and cannot be regarded as his raiyats, and dismissed the appeal.

5. In second appeal two points are taken. The first of these is that the question of adverse possession of the area in suit has not been properly considered. But the lower Appellate Court has found not only that the presumption arising from the Record of Rights has not been rebutted, but also that the plaintiff was in possession at least at the date of decision of the Assistant Superintendent of Survey, which was within twelve years of the institution of the suit. These are findings of fact, which cannot be questioned in second appeal, and, therefore, this contention fails.

6. The second and main contention in the appeal is concerned with the claim of defendants Nos. 2 to 5 to korkar rights in jurigie plots Nos. 625, 661 and 941, or parts thereof.

7. It is urged at the outset that the reason given by the lower Appellate Court for holding that the defendants Nos. 2 to 5 could not acquire occupancy rights in these lands is not sound. This is manifestly well-founded. u/s 67 of the Chota Nagpur Tenancy Act, 1908, a raiyat, who subcultivates or holds lands which he or any member of his family has converted into korkar, has a right of occupancy therein. Nothing in the definition of korkar expressly or impliedly requires that the cultivator, who artificially levels or embanks land primarily for the cultivation of rice, must, at the time when he commences the preparation of the land for cultivation, be a raiyat of the landlord of such land or of the village wherein the land is situated. Indeed the indications in the Act all point in the opposite direction, and in particular the addition made to Section 64(3) of the Chota Nagpur Tenancy Act, 1908, by the amending Act of 1920, which clearly implies that it is not merely a tenant or Resident of a village who can make korkar in that village.

8. There is no controversy that if the lands in suit are, as claimed by the defendants, their korkar within the meaning of the definition, and if no application to the Deputy Commissioner for the ejectment of the korkaidar has

been made by the landlord within two years from the time when they commenced to convert the lands into korhar, the consent of the landlord to the conversion in, under the provisions of Section 64(3), deemed to have been given, and they are not only raiyatt of the landlord, but have, u/s 67, also an occupancy right in the lands and cannot be ejected.

9. It is, however, urged on behalf of the respondent that the question of korhar right in the lands was not raised at the trial and should, therefore, not be gone into now. There is no warrant for this contention. It is clear that the claim to korhar right made in the written statement gave rise at least in part to issue No. 6 which is:

Is the plaintiff entitled to recovery of khat possession of the suit land?

11. The Court of first instance failed to decide this important issue, except in so far as raiyatt, who were not parties to the suit, were affected. The claim was, however, seriously pressed in appeal, but was, as already stated, rejected on erroneous grounds. It is open to the cultivators to say that the presumption u/s 64(3) had in February 1918, when the suit was brought, already arisen in favour of the defendants Nos. 2 to 5, who had admittedly begun to ant down trees and to reclaim the land in March 1915. If then the purpose of the reclamation of the land or any portion thereof was to artificially level or embank the land primarily for the cultivation of rice, the defendants Nos. 2 to 5 have, as I have said, occupancy rights in the land or portions as the case may be. But there is nothing before us to show what the purpose of the reclamation of the jungle land was, nor, if the purpose was to convert the land into korhar, to what area of plots Nos. 623, 661 and 941 the consequent, presumption of landlord's consent and occupancy rights extends. These are matters of fact which remain to be determined.

12. Accordingly the question of title as between the jagirdars and; the respondent having been concluded by the findings of fact and as their action caused him damages to the amount awarded, I would dismiss this appeal so far as the appellants Nos. 1 to 3 are concerned, and allow the respondent his costs of appeal against them. So far as the appellants Nos. 4 to 7 are concerned, I would remand the suit for final decision after determination, having regard to the observations made above, of issue No. 6 in respect of the whole or of parts of plots Nos. 66, 661 and 941, in which these appellants claim occupancy right. Costs throughout the litigation as between these appellants and the respondent to abide the result.

Cootts, J.

13. I agree that the appeal must be remanded for decision as indicated by my learned brother.