

(1948) 01 PAT CK 0004

In the Patna High Court

Parmeshwar Singh and Others

APPELLANT

Vs

Gajo Singh and Another

RESPONDENT

Date of Decision : 05-01-1948

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1949 Patna 89

Hon'ble Judges : Reuben, J

Bench : Division Bench

Judgement

Reuben, J.—This appeal arises out of a suit for arrears of bhaoli rent. The suit relates to 13. 12 acres of land in village Narhat. According to the plaintiff this area forms part of a holding of 15.24 acres, of which defendant 1 is the real tenant, and the suit has been confined to 18.12 acres because this area formed the subject of a proceeding u/s 145, Criminal P.C., between defendant 1 on one side and defendants 2 to 4 on the other, which ended in favour of the latter.

2. Defendant 1 did not seriously contest the suit. Defendants 2 to 4 contested it on several grounds. In the result the Courts below have given the plaintiff a modified decree against all the defendants. This decree has not been challenged by defendant 1. We are concerned with the decree only so far as it relates to defendants 2 to 4, who are the appellants in this appeal.

3. Mr. Kameshwar Dayal on behalf of the appellants has urged three points:

1. That the suit is not maintainable on the ground of misjoinder of parties and of causes of action.

2. that, on the ground of eviction by the landlord, the appellants are entitled to suspend payment of rent; and

3. that the rent has been commuted to nagdi by a transaction which is binding on the plaintiffs.

4. The contention regarding the maintainability of the suit was rejected by the

lower appellate Court under the misapprehension that it had not been raised in the Court below. On the contrary it is expressly mooted in paras, 1, 6 and 7 of the written statement of defendants 2 to 4, and is dealt with by the Court of first instance as the 4th point for determination.

5. According to the appellants, defendant 1 has no concern with the suit land and has been improperly impleaded as a defendant. Secondly, it is their case that the suit land is comprised of two separate holdings, 18 bighas of it being held by defendant 2 and 11 bighas by defendants 3 and 4. The Courts below seem to have accepted the evidence relating to the existence of two separate holdings, although they have left the question of title between defendant 1 and the other defendants open in view of a title suit pending between them. Hence, it is contended, the suit is bad as having been filed in respect of a non-existent holding. On the other side, I have mentioned that according to the plaint itself there is no holding of 13.12 acres. Hence the contention of Mr. Kameshwar Dayal is not without force, being supported by the case of Ambika Prasad Singh and Another Vs. Laxmi Ahir, . In my opinion, however, there is a more fundamental reason why this suit must fail as against the appellants, viz. that, on the case of the plaintiff himself, there is no relationship of landlord and tenant between him and the appellants. He has impleaded them in this suit because they have succeeded in getting a decision in their favour in the proceeding u/s 145, but he does not accept that decision as correct. On the contrary he expressly states that the real tenant is defendant 1, and he has impleaded defendant 1 in this suit in that capacity. A suit for rent is based on the contract between a landlord and his tenant. When the plaintiff says that there is no such contract between him and the appellants how can he get a decree for rent against them? On the above ground, this point must be decided in favour of the appellants and the decree "of the lower Court modified accordingly.

6. In view of this finding it is not necessary to consider the other points, which are obviously irrelevant in a case in which the plaintiff denies the relationship of landlord and tenant.

7. The appeal is allowed. The decree of the lower Court is modified and the suit is dismissed as against the appellants. The appellants will get the costs of all the three Courts.