

(1943) 09 PAT CK 0005
In the Patna High Court

Prahlad Mohanti

APPELLANT

Vs

Prahlad Chandra Das and Others

RESPONDENT

Date of Decision : 27-09-1943

Acts Referred:

Citation : AIR 1944 Patna 276

Hon'ble Judges : Shearer, J

Bench : Division Bench

Judgement

Shearer, J.—This second appeal, which is by the defendant, arises out of a suit to recover possession of 4.86 acres of land and mesne profits. The suit was dismissed by the trial Court, but, on appeal, this decision was reversed. The learned Subordinate Judge gave the plaintiff a decree, entitling him to recover possession of the land, but did not give him a decree for mesne profits. The land in suit is part of, an occupancy holding, situated in an estate of which the plaintiff is the proprietor. The plaintiff asserted that this occupancy holding had been in the possession of one Sushilabala Dasi; that he had sued Sushilabala Dasi for arrears of rent and obtained a decree against her that, in execution of this decree, he had caused the occupancy holding to be sold and purchased it himself; that he had been put in possession of the occupancy holding under a writ for delivery of possession, which was duly served on 31st July 1938; that he had subsequently settled the land with certain persons, who had grown crops on it; and that, on 18th December 1938, the defendant had entered on the land and forcibly cut and removed these crops. The plaintiff, or rather His mother, purchased the revenue-paying estate, in which the land is situated, at a sale for arrears of land revenue in 1931. Sushilabala Dasi was one of the co-proprietors of this revenue-paying estate and the defendant was one of several co-tenants, to whom, originally, the occupancy holding belonged. Sometime prior to 1929, Sushilabala Dasi sued these co-tenants for arrears of rent, and, in execution of the decree, which she obtained, purchased the holding. It so happened that the defendant was in the employment of Sushilabala Dasi. He asserted that Sushilabala Dasi did not, in consequence, evict him from that portion of the

holding, which had 3 been in his possession, and, subsequently, settled it with him under a patta granted on 4th August 1929. In the record of rights, which was finally published on 1st January 1929, Sushilabala Dasi was recorded as being in possession of the occupancy holding u/s 26(2), Orissa Tenancy Act. The defendant, further, asserted that he had known nothing of the rent suit, which the plaintiff had instituted against Sushilabala Dasi, or of the proceedings in execution of the decree. It was not, he asserted, until 1939 that the plaintiff or his servants forcibly entered on the land and evicted him.

2. The learned Munsif came to the conclusion that Sushilabala Dasi had, sometime prior to 1929, purchased the original occupancy holding at a sale in execution of a rent decree and had, subsequently, sublet a portion of it to the defendant. The defendant had, in the opinion of the learned Munsif, continued in possession until 1939. The learned Munsif took the view that the plaintiff had sued Sushilabala Dasi for arrears of rent, merely in order to obtain a decree, and purchase the holding, so as to have a pretext for forcibly evicting the defendant. It is perfectly clear that such interest as Sushilabala Dasi had in the land in suit was an interest, which belonged to her as a co-proprietor of the revenue-paying estate in which the land is situated, and that that interest passed to the mother of the plaintiff at the revenue sale. In other words, Sushilabala Dasi never was a tenant under the plaintiff or his mother; Sushilabala Dasi was under no liability to pay rent to the plaintiff; and, if the plaintiff contrived to obtain against her what purported to be a decree for arrears of rent, the sum due under that decree could not be a charge on the land in suit. Apart from that, when Sushilabala Dasi sublet the land in suit to the defendant, the status of the defendant was that of a raiyat, and, as a result of the revenue sale, the relationship of landlord and tenant was created, by operation of law, as between the purchaser at the revenue sale and the defendant. The learned Subordinate Judge does not appear to have dissented from the findings of fact which had been arrived at by the learned Munsif. Rai Bahadur Chintamani Acharya drew my attention to an observation of the learned Subordinate Judge which runs thus:

But convincing evidence is wanting for a conclusion that the defendants continued to remain in possession from the date Ex. C was created.

3. Immediately before making this remark, the learned Subordinate Judge had pointed out that the defendant had not been in a position to produce more than two receipts showing payment of rent, and that these receipts had been granted in 1930 and 1931. The learned advocate for the respondent suggested that the lower appellate Court had come to the conclusion that, while Sushilabala Dasi had settled the land in suit with the defendant in 1929, she had, subsequently, in or about 1931, terminated the settlement. The learned Subordinate Judge did not, however, say so, and I am unable to regard the sentence in his judgment, which I have quoted, as a finding of fact binding on me in second appeal. There was not a particle of evidence to show, either that Sushilabala Dasi resumed possession of the land in suit before the revenue sale, or that, subsequent to the

revenue sale, the plaintiff settled it with her. As the learned Munsif rightly pointed out, there was a presumption that the defendant, having been put in possession of the land in 1929 by Sushilabala Dasi, and having paid rent to her in succeeding years, had continued in possession. The learned Subordinate Judge, while giving (the plaintiff a decree, entitling him to recover possession of the land, dismissed his claim for mesne profits on the ground that he had not obtained possession of the land under the writ, which he took out in the execution proceedings. That, I think, removes any doubt there e might otherwise be as to the learned Subordinate Judge not having dissented in any way from the findings of fact arrived at by the trial Court. The ground, on which the learned Subordinate Judge decreed the suit, was one which had not been taken in the trial Court, namely, that the plaintiff, as a purchaser at a revenue sale, was entitled to annul the tenure, created by Sushilabala. Dasi in favour of the defendant u/s 52 of Article 11 of 1859. The learned Subordinate Judge observed:

The plaintiff may rely upon several different rights alternatively, although they may be inconsistent. The only limitation to such assertions of different rights is that the pleadings must not be thereby rendered embarrassing.

4. In support of this, he referred to *In re Morgan Owen v. Morgan* (1887) 85 Ch. D. 492 . What was really decided there was that it was open to a defendant to plead special inconsistent defences without the leave of the Court. The decision had no bearing at all on the matter, with which the learned Subordinate Judge was concerned. A plaintiff is bound to set out the material facts, on which he relies, as giving him a cause of action, and, if he is in doubt as to which of several reliefs he may be entitled to it is open to him to ask for relief in the alternative. Similarly, if he has more than one cause of action against a 9 defendant, it is open to him to set out the facts, on which he relies, as constituting each cause of action, and sue on all of them in one and the same action. Now, in this particular case, the plaintiff did not take either of these courses. The plaint, no doubt, contained a statement that the plaintiff or his mother had purchased the entire revenue-paying estate, in which the land in suit is situated, at the sale for arrears of land revenue. It did not, however, contain any allegation that one of the former proprietors, namely, Sushilabala Dasi, had, since the last settlement of the land revenue created a tenure in favour of the defendant, and that the plaintiff was entitled to annul that tenure u/s 52 of Article 11 of 1859. According to the defendant, he had been in possession of the land in suit, with the permission of Sushilabala Dasi, from sometime before. Sushilabala Dasi granted him a patta. The settlement of the land revenue was made in or about 1929, and it may well be that the tenure, created by Sushilabala Dasi, had been created before it was made. In any event, however, that may be, it was incumbent on the plaintiff to set out the material facts relating to this in his plaint. The learned advocate for the respondent has been forced to concede that the plaint was very badly drawn up and that, as it stood, his client was not entitled to the relief, which he has been given by the lower appellate Court. He asked however that he should be permitted to amend the

plaint now, and that the case should be remanded.

5. It would, in my opinion, be extremely wrong for me to accede to this request. Any suit, to avoid or annul a tenure u/s 52 of Article 11 of 1859, is now barred by limitation. Apart from this, the plaintiff knew the facts perfectly well. If he thought that he was entitled to eject the defendant under a right conferred, on him by Section 52 of Article 11 of 1859, he should have made that right Ms cause of action.

6. Instead, he chose to put forward in his plaint a set of facts, which were untrue, and which he must have known were untrue. His conduct was most reprehensible, and he is not entitled to any indulgence of any kind. The appeal will be allowed and the suit will be dismissed with costs throughout.