
(1929) 04 PAT CK 0016

In the Patna High Court

Pratap Udai Nath Sahi Deo and Another

APPELLANT

Vs

Jagannath Mahto and Others

RESPONDENT

Date of Decision : 16-04-1929

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 118, 139, 43

Citation : AIR 1929 Patna 444

Hon'ble Judges : Wort, J;Jwala Prasad, J

Bench : Full Bench

Judgement

Jwala Prasad, J.—This appeal arises out of a suit instituted by the plaintiff to eject the defendants from the lands in dispute. There is a claim for mesne profits also for the year 1980 and 1981. Plaintiff 1 is the Maharaja of Chota Nagpur, plaintiff 2 has been impleaded upon the ground alleged in the plaint that the lands in dispute were settled with him on saika of 20 maunds valued at Rs. 225 in cash under a kabuliyat dated 22nd February 1923 in favour of plaintiff 1.

2. Plaintiff 1 alleges that in accordance with the aforesaid settlement plaintiff 2 grew crops on the disputed lands, but the defendants without having any lawful right illegally cut away the crops in the month of Aghan or Pous in 1980 and that the lands were again settled with plaintiff 2 for the year 1981, but he was resisted by the defendants while trying to cultivate the lands. The plaintiff says that the lands in dispute are the manjhihas lands situate in village Malsiring of which the plaintiff is the sole proprietor and that the lands have been recorded as the manjhihas lands or the proprietor's private lands in the recent survey and settlement operation. Consequently the plaintiff says that the defendants have no right to remain on the land: that they are mere trespassers; and that the plaintiff is entitled to get khas possession over the same. In para. 3 of the plaint the plaintiff asserts that the lands are generally settled on saika every year by taking advance.

3. The defendants resisted the plaintiff's claim on the ground that the lands were settled with the predecessors as raiyats permanently and that they have been in

possession of the same as permanent lessees thereof since 1932 Sambat on payment of a fixed rent in kind of 421 kats of rice and 85 kats of paddy by virtue of a hukumnama dated 9th Chait 1932 Sambat. In short the defendants asserted that they had acquired a permanent and heritable interest and as such could not be ejected by the plaintiff. The defendants also pleaded that the civil Court had no jurisdiction to try the suit and that it was triable exclusively by the Deputy Commissioner of Ranchi.

4. The trial Court held that Section 139, Chota Nagpur Tenancy Act, has no application to the present suit and that the suit was well within the cognizance of the civil Court. It also held that the defendants had failed to prove the grant of any permanent lease or that they had acquired any permanent or heritable interest in the lands. It also held that the defendants did not acquire any occupancy or non-occupancy right over the lands in suit. The trial Court found that:

the ancestors of the defendants and the defendants have been continuously holding all the disputed manjhihas lands since 1952 Sambat.

5. Upon this finding it was contended before the Munsif that the defendants could not be ejected without service of a reasonable notice to quit; but the learned Munsif overruled this contention holding that the defendants are mere tenants-at-will and that no notice to quit was required for ejecting them.

6. From the decision of the Munsif the defendants appealed and the appeal was heard by the Additional Subordinate Judge of Ranchi. Before him it was conceded that the civil Court had jurisdiction to try the case. It was also conceded that the defendants were tenants up to the time of the alleged settlement with plaintiff 2. The learned Subordinate Judge agreeing with the Munsif held that the defendant did not acquire any permanent interest in the land either by virtue of a lease or by adverse possession, nor did they acquire any occupancy right. He, however, held that the defendants were tenants from year to year and as such they could not be ejected without notice. Accordingly he dismissed the plaintiff's suit.

7. Plaintiff 1, the Maharaja of Chota Nagpur, has come up to this Court in second appeal; and it is contended on his behalf that the Court below was wrong in holding that the defendants were tenants from year to year or that any notice was necessary. Upon the pleadings in the case and upon the findings arrived at by the Courts below it is impossible to hold that the defendants were tenants from year to year. It is undisputed that the lands in dispute are the manjhihas lands corresponding to what is known in this part of the country as the zerait lands of the proprietor under the Bengal Tenancy Act. In Section 118, Chota Nagpur Tenancy Act, manjhihas lands are called the landlord's privileged lands; and Section 43 bars the acquisition of occupancy or non-occupancy rights in such lands. The plaintiff stated in para. 3 of the plaint that the lands in suit were generally settled on saika every year by taking advance.

8. The defendants simply set up a permanent lease in respect of the lands in

dispute but they failed to prove that; and on the strength of rent receipts filed by them the Courts below have" held that they were tenants of the lands under the plaintiff. The defendants did not set up an alternative plea and did not at all claim any right of being tenants from year to year or that in order to eject them a notice was required. The plaintiff's case definitely laid in the plaint far from being held to be untrue, the Court below has relied upon it in order to infer that the defendants were tenants from year to year. The learned Subordinate Judge says:

The plaintiffs also assert that settlement is made annually. In the face of such statement and clear evidence of the parties it does not lie in the power of a Court to make a new contract for the parties and lay down that the holders of zeraif lands except for a term or from year to year are tenants-at-will, the landlord and the tenants could terminate the tenancy at once at their own option. It was not their interest to do so in this case; they were to hold the lands until the cultivation is over. The landlord could not interpose as soon as the crops are prepared nor could the tenants leave the lands at any moment he likes. That being so, (especially as plaintiff 1 himself admits in the plaint that the lands are settled at saika rent every year) the only reasonable inference is that the tenants are yearly tenants and not tenants-at-will.

9. In the case of *Richardson v. Longridge* [1811] 4 Taunt. 128. Mansfield C.J., observed as follows:

If there were a general letting at a yearly rent; though payable half-yearly, quarterly and though nothing were said about the duration of the term, it is an implied letting from year to year. But if two parties agree that the one shall let and the other shall hold, so long as both parties pleased, that is a holding at will and there is nothing to hinder parties from making such an agreement. Chambers, J., said that a mere general letting is a letting at will if the lessor accepts yearly rent, or rent measured by any aliquot part of a year, the Courts have said, that is evidence of a taking for a year. That is the old law, and I know not how it has ever come to be changed. The Courts have a great inclination to make every tenancy a holding from year to year, if they can find any foundation for it, but in this case there is none such.

10. A tenancy from year to year is in point of substance a tenancy-at-will, but it differs only in this respect that the will must be determined by a reasonable notice (*Redman's Law of Landlord and Tenant*). If it were a case of an indefinite settlement by the landlord the acceptance of rent by him as has been proved in this case would certainly have made the defendants tenants from year to year and they could not be ejected without notice. The plaintiff's case that the lands used to be settled annually has been accepted by the Courts below and has been taken as a foundation for holding that the defendants were not merely tenants-at-will, but were tenants from year to year. Once it is, held that the settlement was made annually, the conclusion would be irresistible that at the termination of each year the tenancy ceased and that further settlement depended upon the will

of the landlord; he could grant further settlement or refuse to grant it at his sweet will. Therefore, the inference drawn by the learned Subordinate Judge is neither legal nor legitimate that the defendants were in this case proved to be tenants from year to year. No notice to quit is therefore at all necessary. If as a matter of fact the plaintiff at the termination of any year put an end" to the settlement and refused to grant further settlement, the contract ceases. Now, did the plaintiff put an end to the settlement with the defendants and treat them as mere trespassers?

11. The trial Court found as a fact that the defendants were informed of the intention of the landlord not to settle the disputed land with them; and in fact the defendants remitted the rent by money order which the plaintiff refused to receive and returned the money order with a note that the lands were his manjhihas lands and were already settled in 1981 with plaintiff 2 and consequently the money order is not accepted and must be returned. This was done on 9th December 1921 and in Court it was proved that defendant 1 was verbally asked to vacate the lands by the Joint Manager of the Maharaja at about the middle of December 1924. This happened in Aghan, of 1981 Sambat. The agricultural year under the Chota Nagpur Tenancy Act in the Ranchi District commences on the 1st of Chait Sudi u/s 3 of the Act read with the Notification by the Local Government. There was therefore ample notice served upon the defendants long before the agricultural year commenced; and, therefore, the finding of the Munsif has not been at all disturbed by the learned Subordinate Judge and upon that finding it must be held that the defendants had, even if notice was required, ample notice.

12. At least in December 1924 corresponding to Aghan, 1981 both by reason of the refusal of the money order and by intimation to the defendants, the plaintiff put an end to the settlement and refused to give another settlement; and henceforth the defendants must be treated as trespassers on the private lands of the plaintiff. No such formality is required for ejecting a tenant of a private land as in the case of the occupancy or non-occupancy raiyats; for tenants of private lands though they are tenants under the general definition of the term given in Section 3(26), they are not tenants u/s 4, Chota Nagpur Tenancy Act. That section specifies the classes of tenants dealt with under the Act. There are tenants who do not count under any of those classifications but they are not dealt with by the Act. In that sense the classifications of tenants u/s 4 of the Act are not exhaustive; but the Tenancy Act dealt with only those classes enumerated in Section 4 and the other classes of tenants must be governed by some other law, namely the general law laid down in the Transfer of Property Act. This is what has been made clear expressly and by implication by the pronouncement of their lordships of the Judicial Committee in the case of Jagannath Das v. Janki Singh AIR 1922 P.C. 142 their Lordships observed that the definition of "tenant" in Section 3(3), Ban. Ten. Act, is "merely a definition."

13. Their Lordships quoted Section 4 in extenso in order to show that these are

the classes of tenants dealt with by the Bengal Tenancy Act and observed:

Section 4 was merely a section specifying the classes of tenants to which the Act applied; or, in other words, the Act would not apply to tenants or classes of tenants who did not come within the specification given in Section 4 of the Act. So long as a tenant of zeraib lands (in Bengal Tenancy) and manjhihas lands (in Chota Nagpur Tenancy Act), holds the lands under a contract with the proprietor, he is a tenant in the large sense of it and within the general definition of the term given in Section 3. But the moment tenancy terminates the position of such a person ceases to be that of a tenant, and he becomes a trespasser." "That definition" (in Section 3(3), Ben. Ten. Act, of "Tenant).

say their Lordships,

applied to the position of Janki Singh during the continuance of the term for which he held the land, and did not apply to Janki Singh's position after his term had expired, as then, in the circumstances of this case, Janki Singh became a trespasser liable to be ejected.

14. Similarly in the present case the defendants were tenants so long, as the settlements were made with them annually, but at the termination of each year, unless they took another settlement they were mere -trespassers. In the present case the plaintiff (who is the proprietor of the land) terminated the settlement in December 1924 and refused to receive the rent which he used to receive as token of the continuance of the settlements; the defendants thereafter became trespassers and the law of landlord and tenant would not therefore apply to the case. Under the common law they are liable to be ejected. Consequently, after having given due weight to the arguments on both sides, notably of Mr. S.K. Mazumdar on behalf of the defendants, I unhesitatingly hold differing from the view of the Court below that the defendants were trespassers upon the lands in the years in suit and the plaintiff was entitled to eject them and recover khas possession.

15. Mr. Mazumdar, however, raises another question, namely, of jurisdiction of the civil Court to try the suit. As observed in the early part of this judgment, the point was decided against him by the trial Court and it was given up in the lower appellate Court, but has been pressed before us with great vehemence. On a careful scrutiny of the provisions of the Chota Nagpur Tenancy Act relevant to the year in question, I must pronounce the contention to be wholly unsound. It is said that Section 139(4) bars the jurisdiction of the civil Court to try this case. Clause (4) says.

All suits and applications under this Act to eject any tenant of agricultural land

as being wholly within the jurisdiction of the Deputy Commissioner and outside the jurisdiction of any civil Court. In order to bar a suit or an application to eject a tenant of agricultural land from the jurisdiction of the civil Courts it must be shown that such a suit or an application was made under the Act. There are

provisions in the Chota Nagpur Tenancy Act to eject occupancy or non-occupancy raiyats in Sections 22 and 41; but there are no provisions (and there could be none) dealing with the ejectment of a tenant of a proprietor's private land known as manjhihas or zerait land. The present suit has been brought against the defendants not under the Chota Nagpur Tenancy Act, but under the general rule treating such tenants as trespassers after the year of settlement terminated and after they were told by the plaintiff landlord not to hold the land but to give it up. The suit is a suit for ejectment governed by the general law. That seems to me to be a complete answer to the contention advanced on behalf of the defendants-respondents. They have failed to show under what provisions of the Act the suit would come. I would therefore overrule this contention.

16. The result is that the appeal is decreed with costs and the judgment and decree of the Court below is set aside and that of the Munsif is restored.

17. Appeal No. 830 relates to the question of mesne profits. The learned Munsif disallowed mesne profits for the year 1980 and 1981 Sambat upon the ground that some money was received by the plaintiff from plaintiff 2. Mr. Sushil Madhab Mullick on behalf of the appellants does not press for mesne profits for those years, viz, from the date of the institution of the suit to the date of delivery of possession, and he is entitled to it. The appeal is accordingly decreed and the mesne profits will be ascertained under Order 20, Rule 10, Civil P.C.

Wort, J.

18. I agree also that the appeal should be allowed with costs. It seems to me that there are two or three simple considerations which entirely dispose of the case in favour of the plaintiffs. So far as the question of jurisdiction is concerned, my learned brother has dealt with it and I wish to add nothing.

19. The main contention that the defendants' argument was based on was their position as tenants of the plaintiff. Now, as has already been pointed out, the allegation of the plaintiff in his plaint that the lands in dispute were settled annually was met by the averment of the defendants that they were permanent leaseholders. There was no attempt on their part to prove that in their case at any rate the lands were not settled annually. I would have held that there would have been a tenancy from year to year in this case, if the facts which were proved were only that an annual rent was paid by the defendant to the plaintiff. But having regard to the allegation to which I have referred as set out in the plaint and which apparently was proved by the plaintiff and at any rate to some extent accepted by the appellate Court, it seems to me that there was an onus quite clearly placed upon the defendants to show that their case was not of settlement, but a mere acceptance of rent by the plaintiff landlord.

20. In my judgment, that disposes of the main point in the case, that is to say, what was the nature of the defendants' tenancy? If in fact (as appears to be the fact) as alleged by the plaintiff the lands were settled annually, then the only conclusion, and that has not been rebutted in any way, at which this Court would

arrive is that the nature of the tenancy which the defendants had was an annual one and at the end of each year the tenancy came to an end by the effluxion of time and, in those circumstances no notice was necessary.

21. As has been pointed out by my learned brother, the general law applies to a tenancy of this character and, therefore, applying the rule of equity, justice and good conscience, we apply the common law of England. That being so, there is no doubt in my judgment that the defendants were not entitled to any notice and consequently the plaintiff's cause of action was proved and he was entitled to have a decree for the ejectment of the defendants from the lands in suit.

22. Had a question of the validity of the suggested notice come up for consideration and had been material for the purposes of our jurisdiction, I should have doubted having regard to the decision in Harihar Banerji v. Ramsashi Roy AIR 1918 P.C. 102, whether the notice was sufficient. The decision to which I have referred was a decision of the Judicial Committee of the Privy Council in which it was laid down that the principles governing the sufficiency of notices to quit served by landlords upon their tenants are the same in India as in England. But that point it is unnecessary to consider having regard to the decision on the main point. As I have already said I agree that this appeal should be allowed with costs.