
(1939) 01 PAT CK 0003
In the Patna High Court

Radhaballabh Prasad Narain Singh

APPELLANT

Vs

Raghunath Lal and Others

RESPONDENT

Date of Decision : 12-01-1939

Acts Referred:

Bengal Tenancy Act, 1885 — Article 2 Schedule 3, 60
Land Registration Act, 1876 — Section 78

Citation : AIR 1939 Patna 397

Judgement

1. This is an appeal by the plaintiff in a rent suit. He is the proprietor of a share in village Masahi. Four annas share in that village was given by him on lease to the defendants first party on 6th May 1929, on an annual rent of Rs. 275-8-0 for a period of five years, viz., 1337 to 1341 Fasli. The kabuliyat was executed by defendant 1; but it is the plaintiff's case that both defendant 1 and defendant 2, his brother, are joint and were jointly interested in the thica. On 11th May 1929 the plaintiff on taking a loan from defendant second party of Rs. 4000 gave the same share to him in zarpeshgi together with certain ziraitis which had been excluded from the thica lease in favour of defendants first party. In lieu of interest the zarpeshgi deed authorized the defendant second party to receive the rent due from time to time from the thicadar in respect of the thica lease and also to enjoy the usufruct of the zirait. No payments were made on account of rent by the thicadar either to the plaintiff or to defendant second party. The latter demanded from the plaintiff redemption of his principal money as the arrangement for satisfaction of the interest on it had not been successful.

2. The plaintiff on 10th May 1935, paid off the zarpeshgi of defendant second party thereby redeeming the four annas share. On 29th August 1925 he instituted this suit impleading defendants first party, the thicadar and defendant second party, the zarpeshgidar, claiming thica rent for five years 1337 to 1341 Fasli. The defendant second party in substance supported the claim of the plaintiff, while denying any personal responsibility by himself to the plaintiff for the claim and asking for his costs. The defendants first party took several objections to the claim. They pleaded that the plaintiff was not the right person

to sue for the money, as the redemption--the fact of which they questioned--did not convey to him the arrear rents accrued the absence of a separate written assignment of those dues. Secondly, they resisted the claim on the ground of limitation. Thirdly, they denied to have been permitted to enjoy possession of the property, the subject of the lease; and finally, it was alleged that defendant 1 only had" taken the thica and defendant 2 had no concern with it and was not liable.

3. The Munsif decided all the issues, except No. 2, in favour of the plaintiff. As regards No. 2, he held that the three year period of limitation applied under Article 2 of Schedule 3, Ben. Ten. Act, and therefore the plaintiff's claim for 1337 and 1338 was barred, and the remainder of the claim was alive. On the remaining points his findings were in favour of the plaintiff and he gave a proportionate decree. On appeal the District Judge reversed the finding of the Munsif on point No. 1, holding that the actionable claim for arrears of rent could only be transferred by an assignment in writing and not by mere redemption of the zarpeshgi. He did not decide the other issues.

4. In second appeal, Mr. Mullick for the plaintiff first contended that the plaintiff being the registered proprietor, the defendant could not resist him on the plea that he was not the person entitled to rent. Unfortunately, it appears to have been in the Courts below neither proved nor even pleaded that the plaintiff is the registered proprietor, and there is no foundation for applying Section 60, Ben. Ten. Act, and Section 78, Land Registration Act, in this case. On the other point, assuming the question of title to be open, Mr. Mullick could not contest the finding that the proper person to sue for the arrears of rent was the defendant second party. To meet this objection he informed us that the defendant second party (respondents 3 to 5 in this appeal) have presented a petition praying that they be transposed from the category of defendants to that of plaintiffs and from the category of respondents to that of appellants. The rest of the hearing centred round the question whether this application should be allowed. Mr. Mitter for the respondents opposed it on the ground that it would change the character of the suit, and that it would defeat the salutary provisions of the Limitation Act of which the defendants ought to get the benefit.

5. A number of decisions were cited from which it appears that undoubtedly the Court, including the High Court in second appeal, has power at any stage under Order 1, Rule 10, Civil P.C., to permit such a transposition as is here applied for. The power is discretionary and its use will, of course, depend upon the circumstances of the particular case. The purpose of it, like that of the provision in Order 6, Rule 17 for amendment of pleadings, is to enable the Court to be in a position to determine the real questions in controversy between the parties and to avoid allowing a mere technical objection successfully to defeat a just claim. In AIR 1931 162 (Privy Council) , where the defendants objected to the maintainability of a suit by the plaintiff, on the ground that the property was not his alone but was the joint property of himself and certain defendants, and where

the pro forma defendants had asked that a decree should be passed in favour of the appellants, their Lordships thought it unnecessary to determine the question of fact, observing that all the members of the family were parties to the suit and were at least jointly entitled to the whole, and that, if there was a technical objection to the Court passing a decree in favour of the plaintiff,

the Court clearly had power at any stage of the proceedings to remedy the defect under Order 1, Rule 10, Civil P.C, by adding the pro forma defendants as co-plaintiffs with the appellant. Such a course should, in their Lordships' opinion, always be adopted where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings.

6. We may refer also to another case which came before their Lordships. In AIR 1931 143 (Privy Council) the propriety of a transposition under Order 1, Rule 10 was not directly before their Lordships but such a transposition had been made. The suit was a suit for redemption brought by plaintiffs, who were transferees of the equity of redemption from the mortgagors by two permanent leases. In the suit, as originally framed, the mortgagors were joined as co-defendants. The mortgagee defendants resisted the suit denying the validity of the plaintiff's leases and consequently their right to redeem. There, upon the mortgagor-defendants applied to be made co-plaintiffs. Their Lordships referred to this application as "an application which it was obvious must succeed." Transposition was allowed in this Court even in a civil revision in *Surajman Prasad Misra Vs. Sadanand Misra and Others*, *Khaja Muhammad Noor J.* observing that to disallow transposition on the ground that this would result in the claim becoming time-barred would be defeating the very object which the Legislature had in view.

7. In the circumstances of this case, we think that permission should be allowed to transpose the defendant second party from the category of respondents to that of appellants, and also from the category of defendants to that of co-plaintiffs. The result of this will be that the first objection taken by defendants first party, that the plaintiff was not the right person to sue for the money, becomes groundless and unsustainable. The second objection, on the ground of limitation, was decided by the Munsif on the question of the statute applicable, and his decision in that respect is correct in point of law. The third objection, viz. denial by the defendants first party that they had enjoyed the property, was left open by the District Judge, and a finding on this issue will be necessary.

8. The same applies to the fourth objection, that defendant 1 only had taken the thica, that defendant 2 was separate from him and had no concern with the thica, and was not liable. On this also findings of the lower Appellate Court are necessary. We would in this case utilize Order 41, Rule 25, Civil P.C., and refer those two issues for decision to the Court of the District Judge who will decide them on the evidence already on record. The District Judge shall return his findings to this Court within two months from the date of receipt by him of the record.