
(1927) 06 PAT CK 0023
In the Patna High Court

Radhanath Nath Tripathi and Others

APPELLANT

Vs

Chandrai Bhatta and Others

RESPONDENT

Date of Decision : 22-06-1927

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 258, 27, 61

Citation : AIR 1927 Patna 348

Hon'ble Judges : Jwala Prasad, J

Bench : Division Bench

Judgement

Jwala Prasad, J.—The plaintiffs instituted a suit for recovery of arrears of paddy rent for the year 1332 at the yearly rate of 24 maunds of paddy at Rs. 2-8-0 per maund. The claim was based upon a compromise decree (Ex. 1) passed inter parches on the 20th November 1916. The defendants were given a lease of the lands in suit agreeing to pay 22 maunds of paddy as kutbhag. It was a lease for a term of years from 1314 to 1325, that is, 1907 to 1918. During the survey proceedings the lands were recorded as the occupancy holding of the defendants. u/s 61, Chota Nagpur Tenancy Act, the bhaoli rents were converted into nakdi, the rental being Es. 17-11-0 par year.

2. Aggrieved by the decision of the survey and settlement authorities the plaintiffs brought an action in the court of the Munsif of Purulia for a declaration that the defendants were holding the lands under a lease and that they had not acquired occupancy rights therein and that after the expiry of the term of the lease in 1326 the plaintiffs were entitled to enter into possession of the lands. The defendants contested the suit; and relied upon the entries in the survey record of rights referred to above. This litigation between the parties was terminated by a compromise arrived at between them, the terms whereof were set forth in the compromise decree (Ex. 1). The defendants agreed to pay 24 maunds of paddy as rent of the lands in suit from the date of the expiry of the lease in 1326 and they were allowed to hold the lands generation after generation. As regards the period prior to 1326 it was agreed that the terms of

the lease would be binding upon the parties.

4. The plaintiffs contend that the aforesaid compromise decree was acted upon and the defendants had been paying rent at the rate of 24 maunds of paddy per year and consequently they are bound to pay the said rate of rent for the years in suit. The defendants resist the claim of the plaintiffs; they claim to be settled raiyats of the village and assert that the rent mentioned in the lease of 22 maunds of paddy a year was lawfully converted into cash rent of Rs. 17-11-0 by the settlement authorities in the year 1911, consequently the plaintiffs are not entitled to realize bhaoli rent and they must content themselves with cash rent of Rs. 17-11-0.

5. defendants impugn the sulahnama decree of the civil court as being illegal, and in support of their contention the defendants rely upon the judgment of the settlement authorities u/s 61, Chota Nagpur Tenancy Act (case No. 8 of 1910) in order to show that the defendants are settled raiyats of the village and consequently they were recorded as occupancy raiyats in respect of the lands at the time the record-of-rights was prepared and their rents were properly commuted by the survey authorities. They also filed the survey khatian (Ex. B) to show that they were settled raiyats of the village.

6. The Courts below have upheld the contention of the defendants holding that compromise decree in the civil court had the effect of enhancing the rent of the holding by changing the commuted cash rent of Rs. 17-11-0 into produce rent of 24 maunds per year in contravention of Section 27, Chota Nagpur Tenancy Act.

7. The Courts below have further held that the civil Court had no jurisdiction to entertain the plaintiffs' previous suit in which the aforesaid compromise was arrived at and, in support of this contention, they have relied upon Section 258, Chota Nagpur Tenancy Act which enacts that no suit shall be entertained in any Court to vary, modify or set aside, either directly or indirectly, any decision, order or decree of any deputy commissioner, or revenue officer in any suit, application or proceeding under (among others) Section 61 of the Act. Accordingly the Courts below have refused to give the plaintiffs a decree according to the compromise of 1916 and have only allowed them a decree at the cash rent of Rs. 17-11-0 fixed by the revenue officer u/s 61, Chota Nagpur Tenancy Act.

8. To my mind the Courts below have misapprehended the law on the subject. A mere perusal of the compromise decree will show that the parties were bona fide litigating as regards doubtful rights and they settled their disputes by means of an arrangement which they thought would put a stop to the litigation. The defendants were admittedly let into possession of the land by means of a registered temporary lease from 1314 to 1325 by the terms whereof the defendants had no right without the permission of the landlord to continue in possession of the land. The lease was executed in the year 1907 when the present Chota Nagpur Tenancy Act was not extended to Manbhum where the lands in suit are situate. At that time Act 10 of 1859 was in force. The present

Act was extended to the district of Manbhum in the year 1909.

9. Under the former Act a tenant could acquire a right of occupancy only by his continuously holding possession of land as a tenant for twelve years. No occupancy right was conferred upon a tenant who held land for less than twelve years merely because he happened to be a settled raiyat in the village. It is therefore doubtful (and it is not necessary for the purpose of this case to show that it must necessarily be so) that the defendants acquired a right of occupancy in the lands in suit merely because they were settled raiyats in the village on account of their status being that of occupancy tenants with respect to some other lands in the village.

10. The settlement operations took place in 1911; at that time the present Chota Nagpur Tenancy Act was in force in the district of Manbhum. The settlement officer consequently was of opinion that the defendants, although they had held the lands in suit under a lease for a term of years, had acquired occupancy right therein on account of their being settled raiyats in respect of some other lands in the village. Having recorded them as-occupancy raiyats with respect to the lands in suit the survey-settlement officer converted the produce rent into Nakdi rent u/s 61 of the Act.

11. The plaintiffs in the civil suit disputed the legality of the orders of the settlement officer. They maintained that the defendants were not occupancy raiyats and that they were bound by the terms of the lease and that the introduction of the Chota Nagpur Tenancy Act, 1908 in the district of Manbhum in 1909 could not legally destroy or extinguish the rights already acquired by the plaintiffs upon a registered lease giving them the right to eject the defendants after the expiry of the lease in 1326. This was a genuine dispute between the parties and it has not been suggested that the fight between them was either fictitious or sham.

12. Both the parties probably believed in the correctness of the view of the law taken by them and they went to Court in order to vindicate their rights, they had serious losses at stake. Suppose in the civil suit it was held in favour of the plaintiffs that the defendants were temporary lease holders and that the plaintiffs were entitled to re enter on the expiry of the lease, the defendants in that case would have been wholly deprived of the lands in suit.

13. On the contrary, if it were held that the defendants had acquired occupancy right and that they were bound by the commutation of rent arrived at by the settlement authorities, the plaintiffs would for ever have been deprived of their rights of reentry and also would have to content themselves with Rs. 17-11-0 as the cash, rent fixed for the lands in suit.

14. The parties after some time realized the wastefulness of their energy and money in fighting out such a doubtful and dubious case, the result of which would have wrought ruin upon one of the parties. Therefore, regardless of what was the correct legal view and true status of the defendants, they came to terms

and struck at a mean. The compromise petition sets forth the respective claims of the parties and the uncertainty of the result of the litigation. It set out that the defendants will pay rent at the rate agreed upon between them until the lease expired and thereafter they would enhance the rent by two maunds a year. In consideration of this enhancement a heritable right of a permanent feature was recorded for the defendants. The compromise was therefore for the benefit of both the parties. Such compromises entered into between the parties with their eyes open and after fully realizing the pros and cons in the case cannot be lightly thrown away as no court has the right to impose upon the parties its own view of the law. In such a case the question which party had the right in him does not arise.

15. The principle is laid down in the well-known case of *Stapilton v. Stapilton* [1739] 1 Atk. 2 and has ever since been followed by all the Courts. The Courts below have proceeded purely upon the ground that the survey and settlement recorded the defendants as occupancy raiyats. But that was the very question and was the very issue raised by the plaintiffs. If the defendants were not occupancy raiyats, Section 61 did not apply and the settlement authority had no right to commute the rent. The section applies to the permanent tenure holders or occupancy raiyats. The parties were at liberty to settle their rent in any way they liked and the raising of the rent from 22 to 24 maunds after the expiry of the term of the lease would not be an enhancement of the rent. The existing rent of 1916, when the compromise was entered into, was not at all touched and by the compromise the defendants were liable only to pay 22 maunds in the year during the term of the lease. Again, the amount of yearly rent payable was in dispute, and until it was finally settled in the suit brought by the plaintiffs, no question of enhancement could, arise. The rent fixed by the lease was 22 maunds and as between the parties that must be the criterion for judging whether there was any illegal enhancement. The defendants agreed to pay only two maunds more after the expiry of the term of the lease.

16. It is then paid that Sections 139 and 258 bar the jurisdiction of the civil Court to entertain the suit in which the compromise was effected. Reliance is placed upon Clause (4), Section 139, which lays down that all suits and applications to eject any tenant of agricultural land or to cancel any lease of agricultural land shall be cognizable by the deputy commissioner and not by any other Court. Suit No. 271 of 1916 instituted in the Court of the Munsif of Purulia was not a suit to eject the defendants or to cancel the lease in question. It was a suit to declare that the defendants were not the occupancy raiyats and that they had no right to continue to hold possession of the land against the wish of the landlord after the expiry of the term of the lease in 1326. The section Being one which bars the jurisdiction of the civil Court must be construed strictly.

17. The compromise decree sets forth the reliefs claimed by the plaintiffs in that case and those reliefs are not such as can in any way come under Clause (4), Section 139, Chota Nagpur Tenancy Act. Similarly Section 258 relied upon by the

defendants has no application to the present case; that section only bars the cognisance by any Courts of a suit to vary, modify or set aside an order of the deputy commissioner or revenue officer u/s 61.

18. The plaintiffs did not pray in that case specifically to set aside, vary or modify the order of the Deputy Commissioner or the revenue officer u/s 61. Once again the suit was only for a declaration of certain rights of the plaintiffs and no relief was claimed such as is contemplated in Sections 139 and 258. The suit was, therefore, not barred by any provision of the Chota Nagpur Tenancy Act and the compromise decree passed by the civil Court in suit No. 271 of 1916 was well within the jurisdiction of that Court.

19. The decrees of the Courts below are set aside and in lieu thereof a full decree is awarded to the plaintiffs for arrears of rent at the rate claimed in the plaint the rule is made absolute in favour of the plaintiff-petitioners against the opposite party. The plaintiffs suit will be decreed with cost throughout.