

(1917) 06 PAT CK 0011
In the Patna High Court

Raghubir Misser and Others

APPELLANT

Vs

Bhajan Singh and Others

RESPONDENT

Date of Decision : 07-06-1917

Acts Referred:

Citation : AIR 1917 Patna 274 : 40 Ind. Cas. 987

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

Bench : Division Bench

Judgement

1. The plaintiffs in this action seek that they may be declared entitled to 57 toddy palm trees standing upon an ar between Survey plot No. 83 and Survey plot No. 87 situated in Mauza Khanpura in the District of Gaya.

2. The Record of Rights in this case shows that the trees on this ar have been declared to be the property of the defendants, but this entry in the Record of Rights cannot have the effect of overruling well-settled principles of law. If, therefore, the entry in the Record of Rights conflicts with the established law, I think the established law must prevail over the entry in the Record of Rights, and that the presumption attaching to the entry in the Record of Rights must be deemed to have been rebutted. The plaintiffs and the defendants are occupiers of adjoining lands and their holdings are separated by an ar which operates as a boundary between the holding of the plaintiffs and the holding of the defendants. On this ar are planted the trees in suit. On the northern side of the ar are the defendants' lands; and on the southern side are the plaintiffs' lands; and it is on the southern side of the ar that the trees which are the subject-matter of this suit are planted.

3. The defendants claim these trees by virtue of the entry in the Record of Rights. The plaintiffs on the other hand contend that inasmuch as the trees in suit are planted on their side of the ar they are entitled to the trees. The ar, as I have said, operates as a boundary fence between the property of adjoining owners and it is well settled according to the English Law that a boundary fence is owned by the adjoining proprietors to the centre of the fence, each owner

being entitled to claim the land forming the fence to its centre.

4. The learned Judge has held in this case that the ar is a boundary fence and that the trees in dispute are growing in the portion of the fence which belongs to the plaintiffs; that the ownership of the trees must depend upon whose land they are growing and that inasmuch as they are growing on the plaintiffs' land, the plaintiffs are the proprietors. I see no reason to dispute or challenge the accuracy of law stated by the learned Judge. He says that this is the settled law of the Settlement Department and that it accords with the general custom existing in this country and it also accords with the principles of equity. Therefore the Record of Rights cannot prevail in this case and as the trees in suit are growing upon the plaintiffs' lands they must be declared to be entitled to them.

5. The appeal is accordingly dismissed, each party bearing its own costs throughout.