
(1932) 02 PAT CK 0007

In the Patna High Court

Rajendra Narayana Singh Deo and Others

APPELLANT

Vs

Bihari Lal Chakravarthi and Others

RESPONDENT

Date of Decision : 16-02-1932

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 83
Evidence Act, 1872 — Section 35

Citation : AIR 1932 Patna 157

Hon'ble Judges : Macpherson, J; Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—This appeal relates to Balipur a mauza in the Panohet Estate in the district of Manbhum. According to the plaint the plaintiff and their co-sharers like their predecessors-in-title had been in possession of a part of the mauza in talabi or kheraji brahmatter right on a uniform rate of rent from long before the Decennial Settlement, the kheraji or talabi rental for the mauza being shown as Rs. 6-12-0 in the Sarsikan paper of 1197 (Bengali Era) and the plaintiffs enjoying a demarcated 4 anna share of the mauza on a proportionate rent. In the proceeding leading to the Record of Rights which was finally published in November 1923 the plaintiffs were at first recorded as holders of a four anna share in the kheraji brahmatter but on an objection u/s 83, Chota Nagpur Tenancy Act, by the principal defendants 1 to 4 the immediate landlords of the plaintiff the status was altered from kheraji brahmatter to jamai satwa and the rent which the plaintiffs had been uniformly paying for a long time was shown as liable to enhancement.

2. The plaint therefore prays for declaration that a four anna share of the mauza belongs to the plaintiffs in kheraji brahmatter right that the rent payable by them is fixed at Re. 1-12-13-3(couries) and is not liable to enhancement and that the entries to the contrary in the Record of Rights are erroneous. The suit was contested by the defendants 1 to 4 who claimed that the mauza was in their khas possession as patnidars and that the plaintiffs and others held merely as ordinary raiyats.

3. The learned Subordinate Judge who tried the suit came to the conclusion that the plaintiffs had a kheraji brahmatter right in the mauza that the rent paid by them for this right is fixed and not liable to alteration and the Record of Rights to the contrary is incorrect but he was not satisfied that it was four anna share in the mauza that was held by the plaintiffs. He accordingly decreed the suit in part. Defendants 1 to 4 appealed to the District Judge and there was a cross appeal by the plaintiffs in so far as their claim to a declaration that they held a four anna share in the mauza had been dismissed by the trial Court. The learned District Judge dismissed the appeal and allowed the cross-appeal. Hence this second appeal by defendants 1 to 4.

4. Before dealing with the points really pressed in the appeal it is desirable to notice a contention that was raised some what half-heartedly by the learned Counsel for the appellant. Among the papers relied on by the lower Courts is Ex. 5 a certified copy (extract) prepared from a register of Sarsikan papers in the Manbhum Collectorate. Learned Counsel referred to the facts that the register is itself a copy of a copy the suggestion being that Ex. 5 is therefore inadmissible in evidence. Now it is undeniable that a copy transcribed from a copy of an original document but not compared with the original is not even secondary evidence of the original: see *Illus. (c)*, Section 63, Evidence Act. But it has been found that the Purulia record room was burnt during the Mutiny of 1857 and it seems to me that the document which is to be treated as the original in these circumstances is the register now available in the Manbhum Collectorate. u/s 35, Evidence Act relevant entries in such registers are evidence and Section 65 of the Act shows that they can be proved by certified copies such as we have in Ex. 5. The document was therefore rightly admitted in evidence, notwithstanding the objection made by the defence. I observe further that the allegation found in para. 2 of the plaint that the Sarsikan paper of 1197 showed Baliapur as a mauza held in brahmatter right on the annual kheraji or talabi rental of Rs. 6-12-0 was not specifically controverted in the appellant's written statement and that there was apparently no dispute about the contents of the paper before the assistant settlement officer who disposed of the objection u/s 83, Chota Nagpur Tenancy Act, in appellants' favour.

5. Learned Counsel for the appellants has urged that the lower Courts were in error in treating the Sarsikan paper Ex. 5 as if it gave the rents payable by the tenure-holders of the mauza named in it to the zamindars. He contends that the paper instead gives the figures of revenue as distributed by the zamindar over the various mauzas. He has suggested that the papers must have been submitted by the zamindar under the

Amended Code of Regulation relative to the Decennial Settlement of Bengal, Behar and Orissa approved by the Governor-General in Council on 23rd November 1791: see pp. 308 et seqq of Cole-brooke's Supplement to the Digest of the Regulations from 1793 to 1806.

6. According to para. 43 of this Code:

all zamindars assisted by the Government in the course of the first year are to distribute the total assessment of their zamindaris on the several villages contained therein equally and impartially according to the rent derived therefrom respectively and to deliver a record of such distribution in the course of the, three first months of the ensuing year and successively for each year, specifying the name of each village, the estimated quantity of land in each together with an extract thereof containing the distribution of the sudder jumma upon each pargana.

7. Now Ex. 5 does not purport to refer to the law under which the Sarsikan paper was submitted by the landlord or recorded in the Collectorate nor does it give possibly because it is an extract only of all the details required under para. 43 of the Code. What it does purport to do is to give the "Sasikan jumma" of Chakla Panchkote (now Panchet) in respect of Pargatia Chourassi Baliapur (the present Beliapur) is mentioned in it under the heading "name of village" a heading: which is followed by the subheading "talabi brahmattar," and Rs. 6-12-0 is shown against the mauza as the sikka jama." learned Counsel has referred to the statement on p. 193 of Mr. Coup-land's Gazetteer of the District of Manbhum 1911, that the so called quinquennial papers of 1197 (1790) which were furnished by the zamindar in this (Seil. the Barabhum) as in other estate regularly settled in order that in the event of default and a portion of an estate having to be sold, material for allocation of the revenue might be available, contains nothing but a list of 149 villages without any distribution of the revenue. He has also drawn attention to another statement at p. 196 of the same well-known book of reference that at the Decennial settlement the revenue of the Panchet estate was fixed at a certain amount which was

arrived at by a detailed assessment of every village within the zamindari with the exception of the numerous rent-free grants.

8. The former of these references suggests not only that the "quinquennial paper of 1197" was expected to give the distribution of the revenue upon of the villages but also that in estates other than Bharabhum, the zamindars failed in spite of regular settlement to give such distribution. The second reference is far from clear: if the detailed assessment" of every village is taken to mean the revenue by the zamindar, and if on the other hand, the expression means the ascertainment of the zamindar's income from each village, it is not impossible that Ex. 5 merely repeats that figure. Sarsikan papers so called giving not the distribution of the revenue but only the zamindars" income from the mauzas are also not unknown in the Courts.

9. The Sarsikan papers in First Appeal No. 156 of 1929 which was recently heard in this Court for example show the "total rent which the zamindars get from the ilaqadars" of the particular mauzas mentioned in them, and leave the column for total revenue payable to Government" blank. It is true that these papers came not from Manbhum but from the neighbouring district of Hazaribagh, and that they were submitted by the zamindar long after the permanent settlement. I

have only referred to them to show that the contents of Sarsikan papers are by no means effectively standardized. And that the interpretation of the expression "Sarsikanjama," in Ex. 5 must depend on the particular facts and circumstances of the present case. The contention that Ex. 5 gives the revenue and not the rent was not raised in the lower Courts and this is significant since the Assistant Settlement Officer also had treated the jama in Ex. 5 as the rent.

10. No reference has been made to any evidence adduced on the point nor has any other amount of rent been suggested for the mauza such as would make a revenue of Rs. 6-12-0 at all probable having regard to the nature of the tenure. According to the Sarsikan paper itself the mauza was talabi brahmatter and it appears from Mr. Goupland's Gazetteer (p. 205) that the tenures known as talabi brahmatters among others take rank among the hereditary tenures at a fixed rent not liable to enhancement. For further information regarding the nature of these tenures one may perhaps refer to para. 97 of the final report of the survey and settlement operations in the district of Manbhum 1918-25. After dealing with lak"heraj betalabi or niskar brahmatters which are all rent free and panchaki or mogli brahmatters which bear a very small quit rent fixed in perpetuity, Mr. Gokhale the Settlement Officer comes to kheraji or talabi brahmatters and says that:

In course of their fair rent settlement it occasionally argued that the rent of kheraji brahmatter tenure is not necessarily fixed in perpetuity. In no single instance however was the rent of such a tenure found to have altered except as a result of fraud or collusion. It is perhaps not unlikely that kheraj brahmatter tenure were originally ordinary intermediate tenures on enhanceable rent which were called brahmatter merely because they were held by Brahmi. It has been in the past difficult enough for landlords in Manbhum to enhance the rent even of ordinary tenure-holders or raiyats under them. These difficulties must have been more formidable when the tenure-holders happen to be Brahmins and the superior landlords occupied a somewhat ambiguous position on account of their elevation from the rank of aborigines to the dignity of Chhatri Rajputs. No wonder therefore that in practice the rents of kheraji brahmatter tenures were never touched. In course of time hardly any difference came to be recognized between kheraji and mogli brahmatters. In the course of the settlement it was found that the rent of all brahmatter tenures whether kheraji or mogli, was fixed for ever and was not liable to alteration.

11. These tenures escheat to the Crown and not to the zamindars and the question of mineral rights between zamindar and tenure-holder had not arisen in those days. The zamindar had therefore little interest in the mauza beyond the fixed talabi rent and if he even complied with para. 43 "of the Amended Code of 1791" would naturally in his tenures throw as much revenue upon such mauzas as possible. There is thus little definite reason in the present case for assuming that the rent of this talabi brahmatter mouza in 1790 must have been in excess of the revenue distributed by the zamindar on it even if it be the latter that was

really shown in Ex. 5.

12. The considerations already set out regarding the nature of brahmatter tenures in the district incidentally go far to show that tent was not liable to enhancement even apart from such special statutory provisions as are contained in Sections 9 and 51-A (1), Chota Nagpur Tenancy Act, or the similar provisions of the Bengal Rent Act (Act 10 of 1859), which was in force in this district down to December 1909. Has the rent changed in fact? learned Counsel lays stress on the circumstance that the Assistant Settlement Officer recorded an aggregate rent of Rs. 15-7-6 instead of the Rs. 6-12-0 of 1790, for the entire brahmatter tenure. But the order of the Assistant Settlement Officer, Ex. A, makes it clear that this includes rents paid by several tenants whose old receipts do not show them to be holders of any portion of the kheraj brahmatter. Plaintiff's own rate has only varied from Rs. 1-11-0 which is directly evidenced by two receipts of 1831 and 1833, Exs. 1 and 1(1), to Re. 1-12-13-3 karas which is found in a number of receipts ranging, from 1848 [Ex. 1(k)] down to 1880 [Exs. 1(a) and 1(b).] In the Record of Rights it stands at Re. 1-12-9.

13. The calculation made by the Assistant Settlement Officer shows that the change merely responds to the substitution of the company's rupees for sikka rupees in the latter thirties of the last century. He apparently took the batta at one-sixteenth and found Rs. 6-12-0 plus the batta equivalent to Rs. 7-2-9 an amount which is exactly four times as large as Re. 1-12-12-3 karas, as Rs. 6-12-9 was to Re. 1-11-0. The learned District Judge on the other hand seems to have proceeded on the footing that the batta was at the rate of 1/15th according to him and Rs. 6-12-0 sikka, converted into company's coin must have been Rs. 7-3-4 gandas of which 1/4th would be Re. 1-12-16 gandas. Assuming this to be right we have here but nominal change in plaintiffs' favour from not later than 1848 [the date of Ex. 1(k)] for Re. 1-12-13-3 karas and Re. 1-12-16 karas both differ from Re. 1-12-9 in King's coin the rent recorded by the Settlement Officer by less than a pie. In a number of reported decisions under Bengal Act 10 of 1859 it was held that such a nominal unexplained variation was insufficient to destroy the tenant's right of a fixed jama: see for example Babu Huro Nath Boy v. Ameer Biswas [1864] 1 W.R. 230 and Anundlal Choudry v. James Hills [1865] 4 W.R. Act. 10 Rule 33.

14. The lower Courts have concurrently believed the direct evidence regarding the uniformity of or practically uniform amount of plaintiffs' rent furnished by the receipts. In addition they have relied on the Sarsikan papers, a deposit chalan (Ex. 2) of 1890 and landlord's acceptance of the deposite (Ex. 6), and a judgment of 1893 Ex. 9 (which was upheld in appeal Ex. 10) in certain rent suits in which the predecessor-in-title of the present plaintiff was able to defeat a claim of his landlord for the rent of khuchran lands in the village by showing that he was really a cosharer of the mauza which with others she held in kheraji brahmatter right. The learned District Judge concluded that the entry in the Record of Rights, that plaintiffs' rent was liable to enhancement could not be

correct regard being had to the fact that the rent of plaintiffs' share has been uniform for such a long series of years. The learned Counsel has argued that the lower appellate Court must in this connexion have overlooked the fact that the presumption from holding at an unchanged rate for 20 years, which is provided by Sub-section (2), Section 51-A, Chota Nagpur Tenancy Act, does not arise in the present case as it was not a suit application or proceeding under the Act.

15. It has however been repeatedly held that even in cases where the statutory presumption is not directly applicable the Court may act on a similar presumption if the facts justify the necessary inference; see *Buzlal Karim v. Satish Chandra Giri* 10 Ind.Cas. 325 and *Prankrishna Shaha v. Mukta Sundari Dasya* 21 Ind.Cas. 544. It is true that to presume from the mere absence of any alteration in the rent during a number of years (apart from any statutory provision) that the rent is fixed would be to drive the landlord to enhance rents at certain intervals even though he might himself not desire to do so. But in the present case there is more than one circumstance even apart from Ex. 5 with its disputed admissibility and disputed interpretation which taken with the long continued tenant of the same rent leads to a fair inference that the rent of the plaintiffs' share was fixed. One such circumstance is the nature of the tenure as gathered from the Gazetteer and Mr. Gokhale's Settlement Report. Another circumstance is the fact that more than once in the nineties of the last century when the Bengal Rent Act, Act 10 of 1859 was in force in the district "plaintiffs' predecessor-in-title affirmed that he held a four anna share in the lakheraj brahmatter of the mauza at a rent of Rupees 1-12-13-3 karas and that the landlord took no effective steps against it. The concurrent finding that the plaintiffs' rent is fixed and not liable to alteration must therefore stand.

16. It has also been contended on behalf of the appellant that even if plaintiffs' rent be fixed and not liable to enhancement the lower appellate Court was in error in deducing a four anna share for the plaintiffs from the facts that the total rent of the kheraj brahmatter was Rs. 6-12-0 in 1790 and that plaintiffs' share of the rent from 1831 onwards was one quarter of that amount. *Krishna Kamini Dasi and Another Vs. Nil Madhab Saha and Others*, has been cited in support and it has been urged that in order to justify such an inference it must be shown that the total rent had not undergone any change between 1790 1831, and that each fragment of the tenure was held at a proportionate rent.

17. The point however that was decided in the case referred to was merely whether the subdivision of a tenure does or does not operate as breach of the continuity of the tenure even if each fragment is held at a proportionate rent and the aggregate rent equals the original rent notwithstanding the fact that Sub-section (3), Section 50, Ben. Ten. Act the Act which applied to that case, provides not for tenures but for land held by a raiyat. There is a similar provision in Sub-section (3), Section 51-A, Chota Nagpur Tenancy Act, which like the rest of the section was added to the Chota Nagpur Tenancy Act in 1920; and as was shown in the case from 36 C.L.J. it was held in a series of rulings under Act 10 of

1859 that mere subdivision does not effect the continuity of a tenure nor is that position contested in the present case. What has been argued is that as the aggregate rent now is Rs. 15-7-6 it may well be that the rent of the plaintiff's share went up between 1790 and 1831. I am unable to accept this as a fair inference in the circumstances.

18. The aggregate rent may possibly have been increased in the interval in one of the ways indicated in para. 9 of the plaint though it seems more likely that the increase was brought about in more recent times since the older the increase the greater the difficulty of appreciating how the plffs' rent remained uniform as it has clearly done at the earliest from 1831 (to go no further than the earliest receipt). The receipts produced on behalf of the plaintiffs speak of their predecessors' kisma (share) in kheraj brahmatter or of their being kisma in the kheraj brahmatter; they do not specify the share but from 1890 onwards it has been openly claimed against the landlord that the share is one-fourth. The plaintiffs' claim to a four annas share in the kheraj brahmatter was negated by the learned Subordinate Judge on two grounds: (1) that the present aggregate rent was Rs. 15-7-6 and (2) that the plaintiff's were not able to establish how they came by the share claimed. The aggregate rent arrived at by the Assistant Settlement Officer is no ground for negating the claim. If, as the learned Subordinate Judge himself observed, the payment of higher rent by the cosharer of the plaintiffs does not establish the liabilities of plaintiffs' rent to alteration the aggregate rent now payable cannot be any index of the plaintiffs' share in themauza.

19. The learned District Judge who is the final judge of facts has also accepted the evidence that Earn Chakravarty, uncle and adopted father of the plaintiffs' predecessor Ramsundar Chakravarty, was one of four brothers who held the tenure, and that Ram's four annas share has now come to the plaintiffs. He also took into account the claims to a four annas share made by the plaintiffs' in the nineties of the last century with the landlord's acquiescence or failure to establish the contrary. The landlords do not appear at any time to have suggested what plaintiff's share was-if it was not four annas nor have they suggested by what stages the aggregate, rent came to be Rs. 15-7-6 against the Rs. 6-12-0 of Ex. 5. Plaintiffs' share was thus not deducted merely from the fact that the rent of 1831 is one quarter of the figure found in Ex. 5. It seems to me that in these circumstances the Court of appeal below was justified in proceeding; on the implied footing that the total rent, of the tenure had not varied between 1790 and 1831 (whenever it was that, plaintiffs' share was separated) and that accordingly the plaintiffs' share in the kheraji brahmatter was four annas.

20. In my opinion the points urged on behalf of the appellant all fail. I would dismiss the appeal with costs.

Macpherson. J.

21.I agree.