

**(1929) 12 PAT CK 0018**  
**In the Patna High Court**

Rajrikh Pandey and Others

APPELLANT

Vs

Sham Shanker Dubey and Others

RESPONDENT

---

**Date of Decision :** 13-12-1929

**Acts Referred:**

**Citation :** AIR 1930 Patna 410

**Hon'ble Judges :** Courtney-Terrell, C.J;Kulwant Sahay, J

**Bench :** Full Bench

---

## **Judgement**

Courtney-Terrell, C.J.—This is an appeal under the Letters Patent from a judgment of Ross, J., sitting singly decreeing an appeal from a judgment of the Subordinate Judge of Saran which judgment reversed the decision of the Munsif. The plaintiffs are the appellants and the suit was cast in a somewhat peculiar form. The plaintiffs claimed a declaration that a certain area of land measuring 1 bigha 16 cottahs 2 dhurs was their homestead and waste land, that it was in their possession and that the defendants had no right to it. There was a further claim for the confirmation of the alleged possession of the plaintiffs.

2. The facts giving rise to the appeal are very simple. In the cadastral survey of the year 1897 the plaintiffs were recorded as the owners of the land in question. In the revisional survey published on 9th January 1918, defendant 1 is recorded in possession as the britdar, that is the rent-free tenant of the landlord. There is no evidence as to who was in possession of the land between the year 1897 and the date of the final publication of the revisional survey.

3. The plaintiffs succeeded before the Subordinate Judge in obtaining a finding that they had been in possession of the disputed land right up to the institution of the suit which was begun on 6th July 1923.

4. It is conceded, however, that there was no evidence to justify the finding that they were in possession from the date of the publication of the revisional survey up to the institution of the suit, but it is said that by reason of the entry in the cadastral survey of 1897 it must be presumed that the plaintiffs were in

possession until 1918 where the defendants were recorded as being; in possession. The defendants have admitted the plaintiffs' superior title and they merely claim possession as britdars under the plaintiffs. They have not been able to shew at what date their alleged britdar tenancy arose and it has been found as a fact by the lower appellate Court, that is to say, by the Subordinate Judge, that in fact their right has not been established at all.

5. But the defendants rely upon the entry of possession: in the revisional survey and say that; being in possession, the plaintiffs if they wish to succeed in this suit which the defendants contend is in the nature of an ejectment suit, are bound to prove their superior title which the defendants in fact admit and also that they must prove possession within 12 years. This view was accepted by Ross, J., who reversed the finding of the Subordinate Judge.

6. The plaintiffs who come before us on appeal were represented by Mr. Hareshwar Prasad Sinha who advances what appears to me to be a remarkably ingenious argument and which was certainly put, whether it be right or wrong, with great clearness and force. The argument was as follows: He said that having been entered as being in possession in 1897 the plaintiffs must be presumed to have continued in possession until such date as the evidence shows that possession was disturbed by the defendants. His next proposition was that the entry in the revisional survey of 1918 regarding the defendants as being in possession could have no retrospective effect and therefore he concluded immediately prior to the date of the revisional survey the plaintiffs must be presumed, in the absence of evidence, to have been in possession.

7. It is conceded by him that there is no evidence of possession prior to 1918 upon which he could rely other than this presumption arising from the entry in the survey of 1897. But the answer to his argument appears to me to be that although it be true that the entry of 1918 raised no retrospective presumption yet it did raise the presumption that at some moment, unascertained in date, prior to 1918, the defendants had come into possession and that the plaintiffs' possession from that unascertained moment had been lost. Therefore the combined effect of the two entries is merely this: that from 1897 to an unascertained date we must presume that (the plaintiffs were in possession and at some date unascertained prior to 1918 the defendants came into possession; but these two presumptions do not in themselves provide any presumption that the plaintiffs were in possession within twelve years from the date of the suit counting backwards from 6th July 1923. It is true that if the defendants had been trying to rely upon their own possession they could not have relied upon the entry in 1918 as raising a presumption that they were in possession from any specific moment prior to 1918; but on the other hand, if that be conceded, it must also be conceded that it does not give rise to any presumption that the plaintiffs were in possession at any specific time prior to 1918 and the two entries are quite consistent with the possible fact that the defendants came into possession at a moment long before a period going back twelve years from 6th

July 1923. In these circumstances it being conceded that the plaintiffs are not now in possession of the land, if they are to be granted any remedy it would have to be in the form of a decree for possession; and in order to obtain a decree for possession they must show that they were in possession within twelve years of the suit and this they have failed to do. That was the view taken by Ross, J., and in my opinion it was the correct view

8. The learned advocate for the plaintiffs has asked us in the circumstances to allow him to withdraw the suit in order to bring a fresh suit with the necessary consequence that he would be able to adduce at the hearing of such suit actual evidence of possession within; twelve years of the suit. The case having gone to this length and having reached the stage of a Letters Patent" appeal we feel that it would not be right, especially as the defendants do not consent to that course, to accede to this request and the appeal must be dismissed with costs.

Kulwant Sahay, J.

I agree.