(1934) 10 PAT CK 0001

In the Patna High Court

Case No : Appeal No. 321 of 1931

Ram Racheya Singh and others APPELLANT

Vs

Kamakhya Narayan Singh RESPONDENT

Date of Decision : 30-10-1934

Acts Referred:

Citation : (1934) 10 PAT CK 0001

Final Decision : Dismissed

Judgement

Macpherson, J.—This is a second appeal in a rent suit brought by the Ramgarh estate to recover rent for the years 1982, 1983, 1984 and ten annas kist of 1985 S. in respect of the defendants'' istimrari mukarrari tenure of Jabra Jabri at the rate of Rs. 545-12-0 per annum with cesses and interest. Four defences have been pressed at all stages first, that no rent is payable; secondly, that if any rent is payable, it is Rs. 344; thirdly, that in any case it is only payable for 1985 S; and, fourthly, that no interest is claimable.

2. The Subdivisional Officer decreed the suit and in appeal the Judicial Commissioner of Chota Nagpur concurred with his lindings on all points except that he limited the decision as regards the amount of rent payable to the period in suit and left it "open to the parties in any future suit which might be brought for the rent of the tenure to produce further evidence on the point."

3. The history of the tenure is briefly this: In 1865 the proprietor of Ramgarh gave jabra jabri in mukarrari istimrrari tenure to Mazhar Husain and Muhammad Hussain from whom the ancestor of the present defendants who are Babhans, purchased in 1879 under a sale deed which set out that the tenure is mukarrari doami. The purchaser and his descendants paid the rent up till 1954 S. after which year, apparently the date of death of the last survivor among the grantees, they were ready to pay the rent only if a receipt was given in their own name, a condition which the proprietor would not accept. The (much later) Survey and Settlement khewat showed the defendants as mukarridars of a tenancy not liable to resumption. The Raj then instituted a suit for resumption on the ground that,

no right remained under the original grant, to which the defence of these defendants-appellants was that they were in adverse possession for more than twelve years as holders of permanent istimrari mukarrari tenure. This defence failed before the Subordinate Judge but succeeded in the High Court: see Ram Rachya (Singh v. Kamakhya Narayan, Singh, 1925 Pat 216 = 84 I C 586 = 4 Pat 139 = 6 P L T 12 and also in the Privy Council: see Kamakhya Narain Singh v. Ram Rachya Singh, 1928 P C 146 = 109 I C 663 = 55 I A 212 = 7 Pat 649 = 9 P L T 501 (P C). The judgment in the latter case was delivered on 22nd March 1928, which was the first day of 1985 S.

4. On the first point Mr. Mitra''s argument is that he ought not to pay rent for the first three years at least, as he was not in quiet possession during that period. But there is no evidence at all that there was any interference with his possession. The bare institution of a suit is not an interference with actual possession which may still be quietly enjoyed, and there is no proof of interference by the Raj or attempt to collect on the part of its staff throughout the period of the litigation. Rent does not stop when there is a suit for ejectment of a tenure-holder, particularly when the defence is that he holds a permanent tenancy and cannot be ejected. The first point therefore fails.

5. The claim of the landlord is made at the rate shown in the Record-of-Rights, namely, Rs. 545-12-6. The defence urged that the original kabuliat showed a rent of Rs. 344; but failed to call upon the plaintiff to produce the kabuliat which had in fact been Ex. 1 in the title suit and merely produced the judgments in the High Court and in the Privy Council in the ejectment suit. The judgments do indeed indicate that the annual jama in the kabuliat (Ex. 1) was Rs. 344 and it is now urged that the Judicial Commissioner was bound to find that the statements therein appearing rebutted the presumption attaching to the entry in the Record-of-Rights. The Judicial Commissioner said:

The kabuliyat in question has not been produced in the present case, and there is no actual decision in the Privy Council as to the amount of rent as this was not one of the points for decision before them. In these circumstances, upon the evidence as it stands I feel constrained to follow the entry in the khewat as far as the present suit is concerned.

6. It was for the Judicial Commissioner to say whether the presumption attaching to the entry in the Record-of-Rights had been rebutted by evidence. He considered the evidence before him and held that so far as the years in suit were concerned, that presumption had not been thereby rebutted. It is not permissible for us sitting in second appeal to decide this point of fact for ourselves. All we have to investigate is whether this decision of the final Court of fact on this particular fact is vitiated by any error of law. There is no force in the contention that the Judicial Commissioner was bound in law to hold that the presumption was rebutted by these incidental recitals in judgments, and the plea must be negatived. It is noted however that the point is left open in future litigation when the defendants-appellants may be expected to litigate more diligently.

7. In support of the third point, Mr. Mitra relies upon para. 8 of the plaint which has been translated as:

After the disposal of the said civil suit the defendants have become liable for the payment of rent with cesses in accordance with the patta of the mukarrari patta, the kowala and the khewat.

8. He would lay stress upon the expression "have become liable" and argue that the defendants arc not liable for the rent of 1982, 1983 and 1984 but only for the rent of 1985 S. which accrued subsequent to the date of the judgment of the Privv Council. But a reference to the original plaint shows that the years are "paiband hue" which does not involve the idea of becoming liable. In my opinion there was liability throughout, the defendants having become the permanent mukarridars through adverse possession long before the beginning of the period in suit.

9. Finally there is the question of interest. It is urged on behalf of the appellants that if they had offered the rent for the first three years in suit it would have been refused, and that it is not the practice of the Courts to require a party to make a formal tender where from the facts stated or from the evidence it appears that the tender would have been a mere form and that the party to whom it was made would have refused to accept the money. This is the principle stated in Hunter v. Daniel, (1845) 4 Hare 420 = 14 L J Ch 194 = 9 Jur 520 which is quoted in AIR 1923 25 (Privy Council) . On the other side reference is made to S. 58, Chota Nagpur Tenancy Act, under which an arrear of rent shall be liable to simple interest not exceeding twelve and a half per cent, per annum. It is to be observed that the language here used is different from that found in S. 67, Ben. Ten. Act, where an arrear of rent shall bear an interest," etc. Further there is S. 55, Chota Nagpur Tenancy Act, which provides specifically for the present case where a tenant bound to pay money on account of rent, has reason to believe, owing to a fender having been refused or receipt withheld on a previous occasion, that the landlord or his agent would not be willing to receive it and to grant him a receipt for it. It is there provided that the tenant may deposit to the credit of the landlord the full amount which he considers to be due and such deposit shall in all respects operate as, and have the full effect of, a payment then made by the tenant to the credit of the landlord. It has always been the case of the appellants that they were permanent mukarraridars and bound to pay rent accordingly, and that claim to a limited adverse interest had actually become perfected into the right claimed before the years in suit. They [were therefore bound to pay the rent and if they knew that a receipt would not be given to them and yet desired to avoid all liability to interest it was incumbent upon them to make deposit of the rent which would operate and have the effect of a payment made at the time of deposit. In my judgment the Court below correctly held that liability to interest has been incurred by the appellants. In the circumstances however the maximum rate of interest is excessive and we would reduce. It in respect of the first three years in suit to six and a quarter per cent. With this

modification the appeal is dismissed with proportionate costs.

James, J.

10. I agree.

