

(1948) 09 PAT CK 0013
In the Patna High Court

Rama Bahadur Kamakshya Narain Singh	APPELLANT
Vs	
Harkhu Singh	RESPONDENT

Date of Decision : 29-09-1948

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 19, 43

Citation : AIR 1949 Patna 265

Hon'ble Judges : Agarwala, C.J.;Meredith, J

Bench : Full Bench

Judgement

Agarwala, C.J.—This is an appeal by the plaintiff under the Letters Patent from a decision of Ray J. Plaintiff is the proprietor of the Rarngarh Raj, the management of which was taken over by the Court of Wards in 1913 in the time of his grandfather. It was restored to the plaintiff on his attaining majority in 1937.

2. The ancestors of the" defendants held village Lowlang in mukarrari under the Raj. After the death of the then mukarraridar without male issue, the Court of Wards" manager, on behalf of the Raj, sued to resume the village. He also claimed Rs. 1639 as mesne profits between the date of the death of the last mukarraridar and the institution of the suit. The present defendant, as heir of the last mukarraridar, alone entered a defence. The suit was decreed ex parte and the present defendant satisfied the claim for mesne profits. The manager then settled with him 20.36 acres of zirat land in khatas 1, 2 and 28 of village Lowlang on an annual rental of Rs. 35-15-0. The suit out of which this appeal has arisen was instituted for recovery of this land. It succeeded in the first Court except with regard to a part of the claim for mesne profits. On appeal by the defendant the suit was dismissed. Thereafter, the plaintiff preferred a second appeal to this Court, which" was dismissed.

3. The Court below having found that the settlement with the defendant was not vitiated by reason of any mala fides on the part of the manager of the Court of Wards, the first question that falls for consideration is whether the settlement with the defendant was void by reason of lack of authority in the manager to

make it. This requires a consideration of certain provisions of the Court of "Wards Act and the rules framed under it. Section 14 of the Act empowers the Court of Wards (which, by definition, means the Board of Revenue) through its manager to do all such things requisite for the proper care and management of any property, -of which it may take or retain charge under the Act. Section 15 empowers the Court to exercise the power conferred on it by the Act

through the Commissioners of the divisions and the Collectors of the districts, in which any part of the property of disqualified proprietor may be situated, or through any other person whom it may appoint for the purpose,

By the same section the Court of Wards is also authorised to delegate any of its powers to such Commissioners or Collectors or other persons as aforesaid. The manager appointed by the Court of Wards is "any other person" for the purposes of this section. By Section 18, the Court" of Wards is empowered to sanction the giving of leases or farms of the whole or part of any property under its charge. Apart from the general power conferred on the manager by Section 14 "to do all such things requisite for the proper care and management of the property," Section 39 provides that

Every manager appointed by the Court shall have power to manage all property which may be committed to" his charge, to collect the rents of the land entrusted to him, as well as all other money due to the ward, and to grant receipts therefor, and may under the orders of the Court, grant or renew such leases and farms as may be necessary for the good management of the property.

The power of granting or renewing leases under this section, it will be observed, is subject to the order of the Court. In the present case, it has not been shown that the Court of Wards ordered or sanctioned the settlement of the land in dispute with the defendant. If, therefore, the validity of the settlement depended on the powers conferred on the manager u/s 39, it would undoubtedly be void.

4. It is, however, contended on behalf of the plaintiff that the Court of Wards delegated to the manager the power of granting leases which the Court itself possessed by virtue of the provisions of Section 18. This delegation, it is argued, is effected by the rules framed by the Court of Wards in exercise of the powers conferred on it by Section 70 of the Act. That section empowers the Court to make rules consistent with the Act inter alia for the better fulfilment of the purposes of the Act. The particular rule relied upon for this purpose is Rule 72 which occurs in Section III of the Rules. This section enumerates the powers which the Court has delegated to the Manager u/s 15 of the Act. Rules 72, as it stood at the time that this land was settled with the defendant, was as follows:

Under Section 18, to sanction settlements or re-settlements of raiyats" holdings either at higher or lower rents than were paid previously...when the rental of each holding so settled or resettled does not exceed Rs. 50.

Prima facie, this rule merely delegates to the manager the power to settle or re-

settle raiyati holdings when the rental of the holding does not exceed Rs. 50. It does not delegate to the manager the power to create new holdings in zerat land. This view of the rule, namely, that the manager's delegated powers are confined to existing holdings, and does not include the power to create a new holding, is supported by the words "either at higher or lower rents than were paid previously." This rule, however, was amended later on 15th July 1926, that is to say, three years after the defendant's settlement (and has since been renumbered as Rule 65.) It now stands" as follows:

Under Section 18 to sanction the creation of occupancy or non-occupancy holdings or the re-settlement of holdings with occupancy or non-occupancy raiyats at higher or lower rents than were paid previously.... When the rental of the holding so created or re-settled does not exceed Rs. 50.

In the rule as it now stands the words "at higher or lower rents than were paid previously" can refer only to cases of re-settlement and not to cases of the creation of a new holding. But these words in the former Rule 72 appear to apply both to cases in which land is settled and to cases in which it is re-settled. But this rule, moreover, applies only to raiyati land as was held in the case of the old rule in *Kamakshaya Narain Singh v. Kheya Mian* AIR 1948 Pat. 160. With regard to that case, however, it is pointed out on behalf of the defendant that, although a settlement of zerat land by an unregistered lease was held to be bad for want of registration, the settlement of bakasht land was upheld. The reason for that, however, is obvious. Bakasht lands are raiyati lands for the time being in the possession of the landlord. They do not cease to be raiyati lands merely because the landlord has purchased the raiyati interest. Rule 228 is also relevant to this view. That rule provides that ordinarily landlords' privileged lands shall be settled only for a year at a time. Thereby it is implied that they should not be settled on such terms as to deprive the proprietor permanently of them as would be the case if they were settled with a settled raiyat of the village otherwise than as provided by Section 43, Chota Nagpur Tenancy Act. This rule, which indicates the policy of the Court of Wards not to convert zerat lands into raiyati lands, will not, however, prevent that result in all cases.

5. I am satisfied, on a consideration of the relevant provisions of the Act and the old Rules, (that the manager had no power to create a new holding in zerat lands without the sanction of the Court of Wards, and, therefore, in so far as "the manager purported to do so in the present case, the settlement is not binding on the plaintiff. But that is not the end of the matter. It still has to be considered whether, apart from the settlement the defendant has acquired any statutory right which operates as a bar to his eviction by the plaintiff.

6. It is not disputed that the defendant is a settled raiyat of the village. Section 19, Chota Nagpur Tenancy Act, which occurs in ohap, IV, provides:

Every person who is a settled raiyat of a village...shall subject to the provisions of Section 43, have a right of occupancy in all lands for the time being held by

him as a raiyat in that village.

Section 43 provides:

Notwithstanding anything contained in Chap. IV, a right of occupancy shall not be acquired in... (a) landlord's privileged lands referred to in Clause (a) of Section 118, when they are held by a tenant on a registered lease, for a term exceeding one year or on a lease, written or oral, for a period of one year or less.

In order to bar the acquisition of occupancy rights, therefore, it is necessary to show, (1) that the lands are landlords' privileged lands within the meaning of Section 118 (a); (2) either that they are held on a registered lease for a term exceeding one year, or (3) that they are held on a lease, written or oral, for a period of one year or less. It was contended on behalf of the defendant that there is no evidence that the lands in dispute are landlords' privileged lands within the meaning of Section 118 (a) which occurs in chap. 14 of the Act. The heading of this chapter is: "Record of Land, lords' privileged lands." Section 119 provides:

The Provincial Government may, by notification, direct a Revenue Officer to make a survey and record of all lands in any specified local area which are landlords' privileged lands within the meaning of Clause (a) of Section 118.

7. In the record of rights of 1910, the lands in suit were entered as landlords' privileged lands, and there is a presumption of correctness attaching to that entry. We must, therefore, take it in the present case that these lands are landlords' privileged lands within the meaning of Section 118(a), and that, therefore, occupancy rights cannot be acquired in them if they are held on the conditions prescribed by Section 43(a). The defendant is not holding under a registered lease for a term exceeding one year for in the view which I take, the settlement by the manager was void. It is now settled, however, that when a person enters into possession of land under a void lease, he is not a trespasser, but a tenant-at-will under the terms of the lease in all other respects except the duration of time, and that when he pays or agrees to pay the rent therein expressed to be reserved, he becomes a tenant from year to year upon the terms of the void lease so far as they are applicable to, and not inconsistent with, the yearly tenancy: *Rabindra Chandra Ghosh and Others Vs. Mahtha Gauri Singh and Others*, . The facts of that case were that a certain village was granted by way of khorposh, the grant being terminable on the extinction of the male line of the grantee, as in the present case. The latter granted a mukarrari of one of the villages, which was the subject-matter of the grant to the predecessor-in-interest of the defendants about forty years after the death of the original grantee. The plaintiffs, who were the proprietors and successors of the grantor, sued to eject the defendants, having in the meanwhile accepted rent from them. It was held that the effect in law of the payment of rent by the defendants to the plaintiffs and its acceptance by the latter was that a new tenancy was created, which was similar in all other respects to the original tenancy of the defendants

under the grantee, except as to the duration of time, with the result that the defendants became tenants from year to year under the plaintiffs. It has been denied that the present plaintiff accepted rent from the defendants. It appears, however, that at the time when the estate was restored to the plaintiff a proceeding was pending for the realisation of arrears of rent in the Court of the Certificate Officer under the Public Demands Recovery Act. The plaintiff continued those proceedings and realised the rent in execution of the certificate that was issued. In these circumstances, it must be held that the plaintiff accepted rent from the defendant, for, if he wished to repudiate the defendant's tenancy, he could have withdrawn the certificate proceedings or refused to accept the rent that was awarded in those proceedings.

8. It now remains to consider whether the defendant holds on a "lease, written or oral, for a period of one year or less." It has been contended on behalf of the plaintiff that even if the status of the defendant be that of a tenant from year to year, he is holding on the lease for a period of one year. A lease from year to year however, is a periodic lease which continues from period to period: *Bowen v. Anderson* (1894) 1 Q.B. 164. Such a lease is one of uncertain duration which does not purport to be for any definite period as the interest of the lessee does not terminate at the end of the period. A tenant from year to year has an interest for one year certain with a growing interest during every year thereafter springing out of the original contract and as parcel of it: *Legg Strudwick* (1690) 2 Salk 414. The status of the defendant, therefore, is not that of a lessee for a period of one year or less within the meaning of Section 43(a). That section, therefore, does not bar him from acquiring a right of occupancy in the disputed land, and he, being a settled raiyat of the village, must be held to have acquired such a right. It is significant to observe that, prior to its amendment in 1920 in Section 43(a) for the words "a lease written or oral, for a period of one year or less," the words were "a lease year by year." In that respect the language of the original Chota Nagpur Tenancy Act was similar to the language of the corresponding section of the Bihar Tenancy Act which has not been altered. In the Ohota Nagpur Tenancy Act, however, the section has been altered as indicated.

9. The result, therefore, is that the appeal is dismissed with costs.

Meredith J.

I agree.