
(1925) 04 PAT CK 0020
In the Patna High Court

Ramgobind Singh and Others

APPELLANT

Vs

Babu Shashi Sekhar Prasad Singh and Others

RESPONDENT

Date of Decision : 22-04-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : 88 Ind. Cas. 959

Hon'ble Judges : Ross, J;B.K. Mullick, J

Bench : Division Bench

Judgement

B.K. Mullick, J.—Appeals Nos. 1016 and 1017 arise out of Suits Nos. 621 and 622 respectively of 1920 in the Court of the Third Munsif of Arrah, in which the landlords asked for the assessment of fair and equitable rent. The Munsif assessed the rent at Rs. 7 per bigha in each case. Eventually after certain orders made in appeal by the Subordinate Judge and in second appeal by the High Court, to which it is not necessary to refer in detail, the Subordinate Judge reduced the rent to Rs. 5 per bigha, but before this judgment was passed another batch of cases regarding lands in the same neighbourhood came up in appeal before another Subordinate Judge and he agreeing with the lower Court, found that the fair and equitable" rent was Rs. 7. per bigha. Appeals Nos. 1333 to 1338 relate to this second batch and are preferred by the tenants. Appeals Nos. 749 and 750 are appeals by the tenants in Suits Nos. 621 and 622 who are not satisfied with the decree of the Subordinate Judge reducing the rates from Rs. 7 to Rs. 5 per bigha.

2. I will take Appeals Nos. 749 and 750 first. These appeals are concluded by findings of fact. The Subordinate Judge has upon evidence found that Rs. 5 per bigha is a fair and equitable rate. He has rejected the decrees, upon which the Munsif relied on the ground that some are under appeal and that others were made as against tenants, who were themselves co-sharer landlords and he has preferred to rely upon the profit made by the sale of mangoes which is the only crop grown upon the lands. "There is also another defect which is fatal to these

appeals. One of the respondents Surendra Narain Singh died on the 31st July 1921 and no substitution of heirs has yet been made in his place, the decree being joint and indivisible the abatement of the appeal against the heirs of Surendra Narain. Singh causes the appeals to fail also as regards the other respondents. It is urged by the appellants that they were not aware of the death of Surendra Narain Singh till about a week ago, but that is no excuse for it is obligatory upon an appellant to see that the necessary parties are on the record. It appears that the landlords in their Appeals Nos. 1016 and 1017 substituted the heir of Surendra Narain Singh within the time allowed by law and no reason has been assigned why the tenants in their appeals could not have done the same.

3. The appellants, however, urge that the suits are not maintainable, as the plaintiffs are only co-sharer landlords. It is said that this is a suit u/s 158 of the Bengal Tenancy Act (VIII of 1885) and all the landlords must sue. This contention requires careful examination. The lands have been recorded in the Cadastral Survey Khatian as occupancy holdings liable to be assessed with rent. The Settlement Officer found that the tenants had occupancy rights put that the rent had not been fixed by express contract and that none was being "paid. He thought there was, therefore, no existing rent; which could be declared to be the fair and equitable rent. It is said that as Section 158 of the Bengal Tenancy Act only empowers a Court to record the existing rent it does not apply. But Clause (d) of Section 158 entitles a Court to determine the rent payable by the tenant at the time of the application, and there is no reason why this should be restricted to cases where the rate of rent has already been ascertained. If the contract is that the tenant shall pay a fair and equitable rent, then that is the existing rent payable and it is the business of the Court to ascertain it. Section 158, therefore, in my opinion applies.

4. But then Section 158 requires that the application must be made by the whole body of landlords, and, therefore, if the suit is not maintainable under the general or any other law but is one sanctioned exclusively by the Tenancy Act then the plaintiffs must fail. To this the plaintiffs reply that Section 158 is not restrictive and the right to claim a fair and equitable rent is an obligation, arising out of the contract between the parties and is enforceable in the ordinary Civil Courts under the provisions of Section 9 of the C.P.C. If this contention is accepted then the fact that the plaintiffs are only co-sharer landlords will not be a bar to the suit.

5. In my opinion this contention is well-founded. Section 24 of the Bengal Tenancy Act directs that an occupancy raiyat shall pay for his holding at a fair and equitable rate. If a rent is fixed by the demise, that rent is presumed to be "fair and equitable" an expression first used in Section 5 of the Rent Act of 1859 (Act X of 1859). If no rent has been fixed then the tenant is under a liability arising out of the contract to pay such rent as the Court may deem to be fair and equitable. The landlord does not require the authority of the Tenancy Act to bring a suit to enforce the liability and, therefore, Section 188 does not apply. The

argument that the landlord cannot ask the Civil Court to make a contract between the parties is really not relevant because here there is in fact a contract. I am unable to hold that the only jurisdiction for assessing a fair rent where no rent has, at any time, been previously assessed is that conferred by Sections 52, 105, 157 and 158 and similar section of Act VIII of 1885.

6. Therefore here there is no necessity to seek the aid of the Tenancy Act at all. So far back as 1861 it was held in *Nityanund Ghose v. Kishen Kishore* W.R. 1864 Act X Ruling. 82 that by the universal custom of the country mere occupation of land without express permission on the part of the landlord or express condition to pay rent on the part of the occupier constituted the relationship of landlord and tenant and that the tenant was bound to pay a fair rent and the landlord to give him a patta. That was a suit by the tenant u/s 5 of Act X of 1859 to compel the landlord to give him a patta and the following observations of the learned Judges of the Calcutta High Court appear to me to lay down what is still the law, although the provisions for the exchange of patta and kabutiyat have been since repealed.

7. The lands (say their Lordships) then, being lands of which the plaintiff is the proprietor, and the defendant never having paid rent for the same, or acknowledged the zemindar's right to treat him as a tenant, do the parties stand in the relation of landlord and tenant.

8. The defendant holds and cultivates the plaintiff's lands, and had the present suit been one for rent during the occupancy, there is little doubt the defendant would be deemed to be a tenant and be adjudged liable to payment of rent, for it is an acknowledged principle that every zemindar has an inherent right to the rent of any and all lands held and cultivated within his zemindari. In the same way, is he not entitled to receive from the person who holds and cultivates any land within his zemindari a kabuliyat?

9. We think that, though by the law of landlord and tenant, as applied in England, a person who takes and cultivates the lands of another (there being no express permission to cultivate on the side of the landlord, nor any express condition to pay rent on the part of the cultivator) would not be allowed to be regarded as a tenant, but treated as a mere trespasser, the peculiar circumstances of this country preclude the applicability of the technical doctrine of the English Law of landlord and tenant to such a case. Here it is a very usual thing for a man to squat on a piece of land or to take into cultivation an unoccupied or waste piece of land. Tenancy, in a great many Districts in Bengal, commences in this way and where it does so commence it is presumed that the cultivator cultivates by the permission of the landlord and is under obligation to his landlord to pay him a fair rent, when the latter may choose to demand it. Thus, the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law administered in England, as, a trespasser, but as a tenant and he would be so although he may never have expressly

acknowledged the landlord's right, or entered into any express contract with him for the payment of rent. If, he chooses to cultivate the zemindar's lands and the zemindar lets him there is an implied (Contract between them, creating a relationship of landlord and tenant.

10. What then is the rent the tenant should pay in such a case? At the time of the Permanent Settlement competition rents were unknown and the fair and equitable rate was the customary rent, that is to say the Pargana rate. Regulation VII of 1822 which was the first legislative measure for making a Survey and Settlement gave the Settlement Officer no power to enhance rents for the simple reason that enhancements beyond the Pargana rate were not then contemplated: see *Ishur Chandra Sarkar v. Trollock Nath Singha* 19 Ind. Cas. 675 : 17 C.W.N. 865 and it was not till 1879 and 1885 that general powers were given to Settlement Officers to settle fair rates.

11. As for the Civil Tribunals, it was not till 1859 that rules were made for enhancement and reduction of rents: (see Sections 13, 14, 15 and 17 of Act X of 1859). These rules have with modifications been repeated in the Tenancy Act of 1885, but in cases such as we have here the power of the Civil Court to assess a fair and equitable rate be it the Pargana rate customary before 1859 or the prevailing rate or a rate depending on the price of food grains, has never been in doubt. In *Barhamdat Missir v. Krishna Sahay* 20 Ind. Cas. 910 : 18 C.W.N. 466, the learned Judges, while holding that the Settlement Officer was not the only authority who could now assess a fair and equitable rent, expressed some doubts as to whether the jurisdiction of the Civil Court fell under the general law relating to declaratory suits or under the special law contained in Section 158 of the Bengal Tenancy Act of 1885. In my opinion both jurisdictions are available and as Section 158 does not expressly bar the operation of the general law, Section 9 of the C.P.C. operates.

12. If, therefore; the Bengal Tenancy Act does not exclude the operation of Section 9 of the C.P.C., then Section 188 of the former Act is no bar and the plaintiffs, although they are co-sharer landlords are entitled to maintain the suit.

13. In general where the relationship of landlord and tenant exists without any arrangement for the payment of rent properly so-called, there is always an implied promise on the part of the tenant to compensate the landlord for use and occupation of the premises. "The relationship has been sometimes called in English Law a quasi-tenancy and that law always implies a contract or promise by the occupier to pay the landlord a reasonable sum for use and occupation: *Helier v. Sillcox* (1850) 19 L.J.Q.B. 295 : 14 Jur. 573 : 87 R.R. 521. In Bengal and Bihar as pointed out in *Nityanand Ghose v. Kissen Kishore* W.R. 1864 Act X Ruling. 82, the conditions are special and the law implies a contract to pay not compensation but rent.

14. The result, therefore, is that Suits Nos. 621 and 622 are maintainable in their present form and the Appeals Nos. 749 and 750 must be dismissed with costs.

Appeals Nos. 1333 to 1338 of 1922.

15. In these appeals also the right to proceed against Surendra Narain Singh's heirs has abated and for the same reasons as in Appeals Nos. 749 and 750, it must be held that the appeals cannot proceed. They are, therefore, dismissed with costs.

16. It appears to have been admitted by the parties when these appeals came up on the 6th August 1924 before another Division Bench of this Court that they would be governed by the decision in Appeals Nos. 1016, 1017, 749 and 750. But in the circumstances that have occurred this agreement cannot be enforced as the appeals are at the outset incompetent. Kulel Singh one of the appellants in Appeal Nos. 1336, is reported to be dead, but it is unnecessary to give time for the substitution of his heirs because the abatement of the appeal against the heirs of Surendra Narain Singh before the death of Kulel Singh took place renders the whole appeal liable to dismissal and it is immaterial whether Kulel Singh's heirs are now substituted or not. The same objection as in Appeals Nos. 749 and 750 was taken in these appeals regarding the maintainability of the suits by co-sharer landlords; but for the reasons given above the objection is decided against the appellants.

17. The result is that Appeals Nos. 1333 to 1338 are dismissed with costs.

Appeals Nos. 1016 and 1017 of 1923.

18. These are appeals by the landlords and they ask that the decree of the Munsif at the rate of Rs. 7 per bigha be restored. The Subordinate Judge has found on evidence that the fair and equitable rate of rent is Rs. 5 per bigha and the case is concluded by that finding. The appeals are dismissed.

19. There being no respondent, there will be no costs.

Ross, J.

20. I agree.