

(1938) 08 PAT CK 0033
In the Patna High Court

Ramjap Dube

APPELLANT

Vs

Jagadish Chandra Deo Dhabal Deb

RESPONDENT

Date of Decision : 26-08-1938

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 2(a), 21, 22

Citation : AIR 1939 Patna 161

Hon'ble Judges : Wort, Acting C.J.; Manohar Lall, J

Bench : Full Bench

Judgement

Wort, Ag. C.J.

1. This appeal must be dismissed. It is the appeal by the tenant-defendant against the judgment of the District Judge granting a conditional ejectment of the defendant for breach of the terms of his tenancy u/s 22, Chota Nagpur Tenancy Act. It appears that the defendant used his land or part of it for the purpose of building cooly-huts, the land being in the neighbourhood of the Jamshedpur Factory. That learned Judge in his judgment, after remand has come to the conclusion that the land by reason of the building of these huts has been rendered unfit for the purposes of tenancy. With that finding we are not entitled as a Court of Second Appeal ! to interfere. I refer to the decision of the Privy Council in Hari Mohan Misser v. Surendra Narayan Singh (1907) 34 Cal. 718. In that case the District had held that the building of an Indigo factory was not a breach of the Section; the High Court held other, wise; but their Lordships of the Judicial Committee pointed out that the decision of the lower Appellate Court on that question was conclusive and that finding could not be disturbed for any reason by the High Court on appeal.

2. The other contention of Mr. Roy in this case was that by the facts as stated in the judgment, although the learned Judge has not come to any such conclusion, a usage within the meaning of Section 2(a), Chota Nagpur Tenancy Act, was sufficiently established. In the very well-known decision in Goodwin v. Roberts (1875) 10 Ex. 337 Cockburn C.J. made this statement:

We must by no means be understood as saying that mercantile usage, however extensive, should, be allowed to prevail if contrary to positive law, including, in the latter, such usages as having" been made subject of legal decision, and having been sanctioned, and adopted by the Courts, have become by such adoption, part of the common law.

I refer to that case although it related to a mercantile instrument, as the principle laid down there is of universal application. Indeed the very Section which governs the facts of this case on its plain construction is consistent with that principle. Clause (b) of Section 21 provides:

Irrespective of any local custom or usage, in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

3. The word "irrespective" cannot be held to mean "subject to." In my judgment therefore the contention of Mr. Roy that on the facts as stated by the learned Judge in the Court below the usage was established is one which cannot be supported. The learned Judge came to no such conclusion but had he found that there was a usage by which agricultural lands" could be used for building purposes, he would have stated a custom which was contrary to the positive law as laid down by the Chota Nagpur Tenancy Act, a custom therefore which could not be supported. But it is) unnecessary for us to come to any such decision u/s 21 of the Act for the ample reason that there no finding that such usage has been established.

4. All that has-been stated to be the fact in this case is that for some time since the erection of the Jamshedpur Factory it has been the habit of certain persons to build huts upon the land, for the purpose of accommodating the coolies working in the Factory. That is?>the substance of the judgment of the learned Judge in the Court below. That statement is far from finding that such usage as alleged by Mr. Roy has been established. For either of the reasons which I have stated in my judgment, the argument can not, as I have said, be supported.

5. The only other question was as to the decree itself. The decision of the learned Judge in the Court below was quite clear on that matter. The defendant had a period of three months during which he must pay compensation which of course was a trifling sum of Rs. 5 and remedy, the mischief by the removal of the huts from 12 bighas of the land, which was the subject-matter of the suit. We however extend that time by one month from the date of this judgment. The appeal fails and must be dismissed with costs.

Manohar Lall J.

I agree.