
(1920) 05 PAT CK 0015
In the Patna High Court

Ramyad Pande

APPELLANT

Vs

Genda Tewari and Others and Harihar Prosad Tewari

RESPONDENT

Date of Decision : 26-05-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 105A, 109

Citation : 56 Ind. Cas. 993

Hon'ble Judges : Das, J

Bench : Single Bench

Judgement

Das, J.—The defendants are the appellants before me and they were recorded as raiyats in the finally published Record of Rights, the plaintiffs having been recorded as tenure-holders. The Maharaja of Damraon as the superior landlord brought a proceeding u/s 105 of the Bengal Tenancy Act for settlement of rent against the plaintiffs in respect of the land of which they were recorded as tenure holders. In that proceeding the plaintiffs complained u/s 105A of the Bengal Tenancy Act that although they were in fact raiyats and not tenure-holder?, they were wrongly shown in the Record of Rights as tenure-holders and invited the Revenue Officer to try and determine the issue as to which of tenants they, the plaintiffs, belonged. The Revenue Officer tried the issue as to the status of the plaintiffs u/s 105A of the Act and came to the conclusion that the plaintiffs had been properly recorded as tenure holders, It is important to remember that the proceeding just mentioned was a proceeding between the Maharaja and the plaintiffs to which the defendants were not parties, and the only point decided in that proceeding u/s 105A of the Act was that the plaintiffs were tenure holders and not raiyats. The status of the defendants was not in issue in the proceeding before the Revenue Officer and was not adjudicated upon by him.

2. On the 13th January 1912 the plaintiff a instituted a suit against the defendants and also the Maharaja of Dumraon for the following reliefs:

(1). That the Court may be pleased to hold that 10b. 13o. 13d. of land, as per numbers and boundaries given below, situated in Mauzi Pandeypur Phek,

Perganna Bhojpur, out of the guzashti land, forms the exclusive share of the plaintiffs, that they, the plaintiffs, are the kashtkars (cultivators) and guzashtadars of the said land, and not tenure-holders, that the Settlement Officers have found the plaintiffs' tenure-holders contrary to law and custom and have improperly and contrary to the real state of things declared the defendants Nos. 1 and 2 as raiyats and have fixed a nominal rent, that the plaintiffs are entitled to recover possession of the land and to have their names recorded as raiyats in the khata papers, etc., that the entry made by the Settlement Officers is wrong and that the khewat has been wrongly and improperly prepared.

(2). That on the adjudication of the above points a decree for recovery of possession of the land in suit and for expunction of the name of the defendants Nos. 1 and 2 from the khanapuri papers and registration of the names of the plaintiffs as kashtkars and guzash-tadars in the Record of Rights, by invalidating the khewat already prepared, may be passed in favour of the plaintiffs.

(3). That Rs. 176-10 6, the amount of produce for 1318 F.S. as for account given below, may be awarded against the defendants and that an order may be passed awarding future mesne profit up to the date of recovery of the possession, after ascertaining the same and realising Court-fees thereon.

3. That suit succeeded in the Court below, but was dismissed in this Court on the ground that Section 109 of the Bengal Tenancy Act constituted a complete bar to the maintenance of that suit. The decision of Mr. Justice Atkinson, who delivered the judgment of this Court in the appeal arising out of the suit of the 13th January 1912, is re-reported as *Ram Dayal Pandey v. Genda Tewari* 37 Ind. Cas. 641, 1 P.L.J. 479 : 3 P.L.W. 59. It is quite clear that Mr. Justice Atkinson construed the plaint in that suit as a plaint for the rectification of the entry in the Record of Rights as regards the states of the plaintiffs, and in his view such a suit did not lie having regard to the clear provision of Section 109 of the Act. It will be noticed that Mr. Pugh on behalf of the plaintiffs did put forward the argument that although he was not entitled to a declaration as to his status in opposition to the decision of the Revenue Officer in the proceeding u/s 105A of the Act, still he was entitled to maintain an action in ejectment against the defendants on the ground that they were mere tress-passers and had no title to the land. This argument was negatived by Mr. Justice Atkinson on the ground that every averment in the plaint was inconsistent with the relief, as, in his arguments, claimed by Mr. Pugh. Mr. Justice Atkinson took the view that the main relief sought in the plaint was declaration of the status of the plaintiffs as tenure holders, and he repudiated the suggestion of Mr. Pugh that the plaintiffs were entitled to let the plaint go by the board, and claim in the suit a relief which is after all a subsidiary relief. But the learned Judge did concede that if the plaint could be read as a plaint in an action in ejectment, Section 109 of the Act would constitute no bar to such an action and the Court would be bound to try such a suit. In other words, the learned Judge" left the question relating to the status of the defendants open as between the parties.

4. It is clear, therefore, that the question, whether the defendants have any title to the disputed land of which they are in possession or are mere trespassers and are liable to be ejected, has never yet been tried in any of the Courts. In the proceeding before the Revenue Officer the defendants were not parties and their status was not drawn into controversy between the parties. The question was undoubtedly raised in the suit of 1912, but Mr. Justice Atkinson, having regard to the frame of the suit, refused to adjudicate on it and left the matter expressly open between the parties.

5. On the 31st of July 1916 the plaintiffs commenced the present action claiming therein the following reliefs:

1. That it may be adjudicated by the Court that the principal defendants are trespassers in respect of the said land. The plaintiffs never admitted the principal defendants Nos. 1 to 3 as raiyats.

2. That the entry in the survey papers that the defendants Nos. 1 to 3 are raiyat"s in respect of the said land may be declared as wrong.

3. That the possession of the plaintiffs over the said lands, which they have acquired under a writ of delivery of possession after the decision of the Sub Judge, may be confirmed. If in any way it is proved that the plaintiffs are out of possession, their possession with mesne profits may be awarded.

3 (a). That khas possession may be awarded to the plaintiffs over the lands in dispute and that mesne profits from the date of dispossession up to the date of possession may be awarded on ascertain-ment thereof in the miscellaneous department.

4. That having regard to the survey proceedings if the possession of the plaintiff and the pro forma defendants be considered joint, then the joint possession of the plaintiffs and the pro forma defendants may be confirmed. If they be found to be out of possession, then joint possession may be awarded to them.

5. That an injunction may be issued against the principal defendants restraining them until the disposal of this suit from interfering with the possession of the plaintiffs, which they had acquired under a judgment of the Court.

6. This suit was contested mainly on the ground that the decision of this Court in the previous suit operated as res judicata, and was a complete bar to the maintenance of the present suit. The learned Munsif who tried the suit gave effect to the plea of res judicata and dismissed the plaintiffs" action. On appeal the learned Subordinate Judge has taken a different view on the question of res judicata and has remanded the suit to the Court of first instance for trial on merits. It is against this order of the learned Subordinate Judge remanding the case to the Court of first instance that this appeal is directed.

7. In this Court Mr. Susil Madhab Mulliok on behalf of the appellants put forward two grounds as defeating the right of the plaintiffs to maintain the present suit.,

His first contention was that Section 109 of the Act barred further inquiry into the subject and secondly, that the previous decision of Mr. Justice Atkinson operated as *res judicata* between the parties.

8. So far as the objection based on Section 109 of the Bengal Tenancy Act is concerned, I am of opinion that it must be overruled. The present action is an action in trespass against the defendants. In such an action the status of the defendants is the relevant issue to be tried by the Courts, Now" the defendants were not parties to the proceeding before the Revenue Officer, nor" was the matter in controversy in this suit the subject of the proceeding before the Revenue Officer. I am of opinion, therefore, that Section 109 does not constitute any bar to the maintenance of this suit. On the second question, the decision of Mr. Justice Atkinson may be relied upon either" as an authoritative decision of this Court on a question of construction and therefore binding on me or as evidence in the case operating as *res judicata*. I have, however, to construe the plaint which has been filed in this action, and not the plaint which was filed in the suit of 1912. The plaint as filed in this action is clearly a plaint as in an action in ejectment. Mr. Susil Madhab Mullick asked me to compare the plaint filed in this suit with the plaint filed in the suit of 1912 and asked me pointedly where the difference between the two plaints was. The essential difference between the two plaints is that in the plaint of 1912 the plaintiffs asked for a declaration of their status as cultivators and *guzashtadars* of the said land and made a distinct attempt to get behind the decision of the Revenue Officer in the proceeding u/s 105A of the Act. No doubt they asked for recovery of possession of the land from defendants Nos. 1 and 2, but they asked for this relief as necessarily following or flowing from the declaration they sought, namely, that they were cultivators and not tenure-holders. Rightly or wrongly Mr. Justice Atkinson held that if it was incompetent to the plaintiffs, having regard to the proceeding u/s 115 A of the Act, to ask for a declaration of their status as *raiya*s, it was impossible for the Court to give any relief at all to the plaintiffs in a suit framed on the cause of action that they were *raiya*s and not tenure-holders. In the plaint in this suit they ask for ejectment of the defendants on the ground that the defendants are not *raiya*t but are trespassers. They do not ask for a declaration of their states as tenure-holder?, and that is the essential difference between the two plaints. It is because they asked for such a declaration in the plaint of 1912 that Mr. Justice Atkinson dismissed their suit. Here they do not ask for that declaration but they seek to eject the defendants on the ground, not that the plaintiffs are *raiya*s, but that the defendants are not *raiya*s but are trespassers. It is, to my mind, clear that this issue, not having been allowed to be raised in the previous suit, must now be tried. I hold that the decision of the Subordinate Judge on this point is entirely correct. I would dismiss this appeal with costs.