

(1916) 12 PAT CK 0011

In the Patna High Court

Case No : Appeals from Appellate Decrees Nos. 2549, 2763, 2764 and 2765 of 1915 and 30 of 1916

Sadanand Tewari and others

APPELLANT

Vs

Deb Nath Manjhi and others

RESPONDENT

Date of Decision : 07-12-1916

Acts Referred:

Citation : (1916) 12 PAT CK 0011

Judgement

Mullick, J.—Appeal No. 2549 arises out of Suit No. 1872 before the Deputy Collector of Manbhum, the appeal before the Judicial Commissioner in that suit is No. 10. Second Appeal No. 30 of 1916 arises out of Suit No. 1882, which corresponds to Appeal No. 45 before the Judicial Commissioner. Second Appeal No. 2763 corresponds to Suit No. 1848 and first Appeal No.40; and Second Appeal No. 2765 corresponds to Suit No. 1878 and First Appeal No. 42. All these five suits were based upon a registered kabuliyat executed in Suits Nos. 1848 and 1872 by the defendants themselves, and in the remaining suits by the predecessors of the present defendants.

2. The plaintiffs claim rent of five holdings amounting to various sums in cash, and including certain quantities either of paddy or of ghee or both the money value of which is alleged to be part of the contract of tenancy executed at the time of the execution of the kabuliyats. The defendants pleaded, first of all, payment; secondly, that the rate of rent was incorrect; thirdly, that the lands had not been properly described, and fourthly, that the suits were bad for misjoinder.

3.The plea of payment had been found against the defendants. But on the substantial question of what is the rate of rent the Court held that the plaintiffs had not been able to prove the contract alleged by them, and decreed the suits at the rents admitted by the tenants. There was an Appeal in all the suits except 1872 to the Deputy Commissioner and in suit 1872 there was an appeal to the Judicial Commissioner. The appeals to the Deputy Commissioner's Court were transferred u/s 225 of the Chota Nagpur Tenancy Act of 1908 to the Judicial

Commissioner, with the result that all the five appeals were heard by the last named officer and dismissed. The present second appeals have been preferred to us by the plaintiffs.

4. The first point taken before us by the learned Vakil for the respondents is one as to jurisdiction. He urges that the appeals in respect of Suits Nos. 1878, 1882, 1848 and 1870, which are below Rs. 100 in value, did not lie to the Judicial Commissioner at all, and that, if the first appeals had been heard by the Deputy Commissioner, the Deputy Commissioner's order would have been final. He urges that if the Judicial Commissioner had no jurisdiction, then we in Second Appeal have no jurisdiction.

5. But he disregards the fact that these suits were transferred to the file of the Judicial Commissioner under the provisions of Section 225 of the Chota Nagpur Tenancy Act, and that therefore the Judicial Commissioner had jurisdiction to deal with the appeals, although the subject-matter was less than Rs. 100 in value. The question then arises whether in these suits there is any Second Appeal to us against the decision of the Judicial Commissioner.

6. The learned Vakil for the respondents falls back upon Clause 2 of Section 223 of the Chota Nagpur Tenancy Act, and contends that as the suits were of a Small Cause Court nature and less than Rs. 500 in value no Second Appeal lies to us by reason of the provisions of Section 102 of the Civil Procedure Code.

7. Now, if these suits had been suits of a Small Cause Court nature this contention would have prevailed, but the suits being rent suits were not cognizable by a Court of Small Causes, and therefore they did not come within the provisions of section 102 of the Civil Procedure Code. A Second Appeal clearly lies to us against the decree of the Judicial Commissioner in these four suits.

8. With regard to Suit No. 1872 in which the subject-matter was over Rs. 100 in value, the only ground urged by the learned Vakil for the respondents is, that it falls within the provisions of Section 102 of the CPC and that no Second Appeal lies, I have already decided that this is not a suit of Small Cause Court nature, and therefore this contention must also fail. Therefore the plea of jurisdiction as regards all these five appeals had no substance.

9. Coming now to the merits of the cases, the first argument addressed to us is, that the registered kabuliyats containing the contract are invalid, and the learned Vakil points to the finding of the learned Judicial Commissioner which is to the effect that the kabuliyats were never acted upon. It is true that both the Courts of first instance and the Court of first appeal found various reasons for believing that the executants of the kabuliyats were not aware of their contents.

10. But I am unable in Second Appeal to go into any of these matters for the simple reason that I find that no issue as to these kabuliyats having been executed without the knowledge of the defendants was ever raised at the trial.

The defendants never pleaded that there was fraud, coercion or undue influence; and execution being admitted it was not open to the Courts without a special issue, upon the point, to find that the defendants in executing the kabuliyats were not aware of their contents.

11. The learned Vakil for the respondents relies upon a condition in the kabuliyat which is to the effect that the defendants are liable to ejectment on notice, and he contends that so hard a condition could never have been imported into the document with the knowledge of the executants. But as I have already said, there is nothing to show that the defendants challenged this document in the issues, and it seems to me that if they had done so the plaintiffs might quite possibly have adduced evidence to show that this term of the contract was made with their full knowledge and consent.

12. In any event a complete answer to the learned Vakil's contentions is, that as no issue was raised on the point whether the defendants were or were not aware of the contents of the documents, the finding of the Judicial Commissioner cannot debar the plaintiffs from succeeding in this suit.

13. Then the learned Vakil for the respondents goes further and urges, that the kabuliyat was in itself altogether invalid, and he relies upon Section 79 of the Chota Nagpur Tenancy Act for the purpose of showing that a contract which bars a tenant from acquiring occupancy rights is a totally invalid contract. Now, referring to the kabuliyat, I nowhere find that there is any agreement barring the tenants from acquiring occupancy rights. The contracts were executed in 1303 F.S., that is 1896, at a time when the present Chota Nagpur Tenancy Act was not in force in the District of Purulia, and for all I can see the term as to ejectment was a perfectly valid contract under Act X of 1859, which was the Act applicable to the contract at the time.

14. There is not a word in the kabuliyat to show that the defendants were at that time occupancy raiyats, and in my opinion Section 79 of the Chota Nagpur Tenancy Act has no application to the case. Therefore the finding of the learned Judicial Commissioner that the kabuliyat was not operative is in my opinion wholly erroneous.

15. Then the learned Vakil for the respondents contends that although the cash rents for the enforcible, the price of paddy and ghee is not enforcible, because these payments are abwabs, and he relies upon Section 10, Act X of 1859, which directs that no illegal cesses are recoverable from a tenant, Now, the test, as to whether such payments are abwabs or not, has been laid down in many cases, of which one of the latest is *Kalanandan Singh v. Eastern Mortgage Agency Co., Ltd.* (1913) 18 C. L. J. 83=19 I. C. 701 and the learned Judges observed there "that if a particular sum specified in the lease or agreed to be paid is the lawful consideration for the use and occupation of the land, that is to say, if it is really part of the rent although not described as such, the landlord would be entitled to recover the same, and the whole question in the case is, whether the items,

claimed are really part of the rent which was the consideration for the letting out of the land."

16. To like effect is the opinion of Maclean, C. J., in Radha Charan Ray Chowdhry Vs. Golak Chandra Ghose, and there the learned Chief Justice observes, "to my mind each of these case depends upon, its own particular circumstances, and we must look at the contract to see whether the payment which the tenant agrees to make is in reality part of the rent as opposed to what is known as an abwab." Now, applying that test to the cases before us it is quite clear that upon the contracts entered into by the defendants the consideration for the use and occupation of the lands was a certain amount of rent in cash and the price of certain quantities of paddy or ghee or both, as the case may be, and that the total of these two items was to constitute one whole rent or jama, which was payable by the defendants.

17. The total rental shown in the kabuliyats, was clearly the consideration payable by the tenants for the settlement made with him by the landlord. There is no indication whatever that the price of paddy and ghee was in any case intended to be an imposition independent of the rent of the land which the Defendant was leasing from the landlord.

18. In this view the amounts claimed for ghee and paddy were part of the total rent, payable for the land, and the objection on the ground that the zamindar is claiming an abwab is not tenable. This disposes of all the points raised before us in the argument

19. We threw out a suggestion to the learned Vakil for the appellant, that possibly he might see his way to allowing the decree of the lower appellate Court to stand for the years in suit, provided he got a declaration from us that for future years he was entitled to claim rent at the full contract rate. But he has not been able to accept our suggestion.

20. In these circumstances he will get a decree for the full amount. We will set aside the decree of the learned Judicial Commissioner and substitute therefor a decree in each suit allowing the plaintiffs the full amount of rent claimed in the plaint, together with interest at 12 percent, on the arrears. But the question of costs is within our discretion and having regard to the dilatory conduct of the plaintiffs, we direct that they get no costs in either Courts.

21. Atkinson, J.:-

22. With regard to the point taken by the Vakil for the respondents, namely, that under the Provincial Small Cause Courts Act no Second Appeal lies in this case, the value of the appeal being under Rs. 500, Section 15, sub-Section 1 defines the jurisdiction of a Court of Small Causes. It expressly says that no Court of Small Cause shall take cognizance of the suits specified in the Second Schedule, as suits excepted from the cognizance of a Court of Small Causes. And in the Second Schedule under Clause 8 one of the classes of suits exempted is a suit

for recovery of rents other than house rent. This being an action for the recovery of rent other than house rent would be prima facie excluded by the operation of Section 15 and Schedule II of the Act.

23. The learned Vakil for the respondents this morning in the course of the delivery of the judgment of this Court by my learned brother referred for the first time to a case Soundaram Ayyar v. Sennia Naicken (1900) 23 Mad. 547=10 M. L. J. 329 (F. B.) and he endeavoured to insinuate that the case had some application to the facts of the present case.

24. A very cursory glance at the judgment will completely satisfy any observer that that case has decided nothing to controvert our decision and its accuracy as delivered by the judgment of my learned colleague. The head-note of the case is somewhat misleading and is as follows:-

"A suit for recovery of rent other than house rent is a suit of the nature cognizable in Courts of Small Causes within the meaning of Section 586 of the Code of Civil Procedure, and no Second Appeal lies from decision therein when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees."

25. It is well to observe that in that case power was given u/s 15 of the Act to the Local Government Board to extend to the Court of Small Causes jurisdiction in cases of rent other than house rent, and it was upon that basis that the Court decided the case. In the case under reference it would appear that all the Courts of Small Causes in Madras had power to grant decrees in respect of claims for rent other than house rent, and it is only necessary, to clear up the matter, to refer to the judgment at p. 555.

26. It was Full Bench decision presided over by Sir Arnold White, Chief Justice. The learned Judge deals with Section 15 and describes the jurisdiction it confers, and then says, "The same section empowers the Local Government, subject to the exceptions in the Schedule and the provisions of any enactment for the time being in force, to direct that all suits of a civil nature of which the value does not exceed Rs. 1,000 shall be cognizable by the Court of Small Causes. Amongst excepted suits specified in the Schedule are suits for the recovery of rent other than house rent unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto."

27. By a notification, dated the 24th January, 1888, the Madras Government has invested all Subordinate Judges and District Munsifs within the Presidency with jurisdiction "to try on their Small Cause side all suits for rent falling within the pecuniary limits of their special jurisdiction."

28. The grounds of that decision and its ratio decidendi are obviously plain. The authority cited has no application to the present case.

29. I concur in the judgment of my learned colleague.