
(1945) 02 PAT CK 0010
In the Patna High Court

Sajib Mian

APPELLANT

Vs

Lango Uraon and Another

RESPONDENT

Date of Decision : 05-02-1945

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 48

Citation : AIR 1946 Patna 207

Hon'ble Judges : Fazl Ali, C.J.;Sinha, J

Bench : Full Bench

Judgement

Sinha, J.—This is a defendant's second appeal against the decision of the learned Subordinate Judge of Ranchi, dated 24th May 1943, reversing that of the learned Munsif of the same place, dated 28th February 1942, in a suit in ejectment. The plaintiff's case was that he is the pahan of the village Malti where the lands in dispute lie; that the lands in question have been set apart by the village community for the performance of worship of spirits; and that the said lands are recorded in the record of rights as bakasht Bhuinhari Pahnai or bakasht Bhuinhari Mahtoi. According to the plaintiff's case, they are Pahnai and Mahtoi lands which belong to the whole village community, and are, therefore, inalienable to any extent. Chamru Uraon, the plaintiff's father, was the former pahan of the village. He made certain illegal alienations in favour of defendant 1 and his brother, and the alienees gave a portion of the lands in zerpeshgi to defendant 2 by a registered deed, dated 4th February 1918.

2. It is not said in the plaint when Chamru died. It has been only alleged that the plaintiff succeeded his grandfather as the pahan of the village, as the plaintiff's father had predeceased his own father. On the allegation that the defendants' possession is wrongful, the plaintiff seeks possession of the properties. The defence was that Chamru pahan had executed two registered mukarrari deeds, dated 3rd September 1892, and 17th January 1905, in favour of defendant 1 and his brother, now deceased, in respect of the disputed lands. Since then they have been in possession, and in 1918 they executed a zerpeshgi deed in favour of

defendant 2 who has been in possession since the date of his zerpeshgi in respect of that portion of the disputed lands. The defendants further contended that the lands were transferable at the time the mukarrari deeds were executed, and they further denied that the lands were Pahnai or Mahtoi, and, therefore, inalienable.

2. The learned Munsif, who tried the suit in the first instance, came to the conclusion that the lands were the ancestral lands of the plaintiff's family, and had been entered in the revisional survey khewat, Ex. 1, as Bhuinhari Pahnai and Bhuinhari Mahtoi. In the khatian, there is a note that the defendants were in wrongful possession. The Munsif, therefore, took the view that the lands were the ancestral lands of the plaintiff, and that they did not belong to the entire village community, and, as the transfers in question made by the former pahan were made before 1st January 1908, when a Btatutory bar was created against the transfer of such lands, they were binding on the plaintiff being the successor-in-interest of the transferor. Alternatively, he found that, if they were inalienable by custom, as contended op behalf of the plaintiff, the transfers in question were void ab initio, and should have been questioned by the alienor himself. In that View of the matter, the trial Court came to the conclusion that the suit was barred by 12 years limitation. Thus, on the plaintiff's own case, the trial Court held that the suit was barred by limitation or, as the learned Munsif put it, the defendants had acquired a title by adverse possession for more than 12 years.

4. Against the decree of dismissal passed by the learned Munsif, the plaintiff brought an appeal which was heard by the learned Subordinate Judge. The lower appellate Court came to the conclusion that the plaintiff's case-that the lands being Pahnai and Mahtoi, were inalienable and non-transferable is correct. That being so, according to the lower appellate Court, the plaintiff could challenge the transactions when he succeeded to the office of the pahan. However, the learned Subordinate Judge fell into the error of thinking that it was the admitted case of the parties that Chamru Uraon died within. 12 years of the institution of the present suit, and, consequently, the bar of 12 years limitation did not apply to it. The learned Subordinate Judge also seems to have come-to the finding that the lands were really the property of the village community and held-by the pahan for the time being in lieu of services for the performance of certain special duties to the community, and, therefore, by custom inalienable. In the result, the learned Subordinate Judge decreed the suit and the appeal before him with costs in both the Courts. Hence this second appeal which was heard in the first instance by a single Judge of this Court who directed that the case be placed for hearing before a Division Bench, as it involved a substantial question of law which is not free from doubt and difficulty.

5. Mr. G.C. Mukherjee on behalf of the-appellant has contended, in the first instance, that before 1st January 1908 such Bhuinhari lands were not inalienable by law. According to his contention, it was only by the provisions of Section 48, Chota Nagpur Tenancy Act, that such lands were declared to be inalienable. It

was contended, on the other hand, on behalf of the plaintiff-respondents by Mr. R.K. Sahay that such tenures are mere service tenures which by local custom were inalienable. He has relied upon the statements contained in the Settlement Report of Ranchi District by Mr. Taylor to the effect that transfers of such tenures were treated as illegal and entered as such in the record-of-rights. But there is no categorical statement in that report that by the custom of the country, or by any peculiar custom attaching to these kinds of tenures, the pahan for the time being was not entitled to make any transfers; nor is there any allegation in the plaint that there was any such custom recognised by the Courts.

6. On the other hand, there are indications in that Settlement Report itself that there used to be frequent transfers of such tenures and that thousands of such transfers have been noted in the record of rights prepared during the revisional settlement proceedings. Hence, the position is that before 1st January 1908, there was no statutory bar to the transfer of such tenures, nor is there any averment in the plaint that there was any local custom of inalienability which could be recognised and given effect to by the Courts in dealing with such transfers. In my opinion, therefore, the learned Munsif appears to have taken the correct view of the legal position as regards the transferability of the tenures in question before the enactment referred to above. That being so, the transfers in question in this case, having been made before 1st January 1908, cannot be questioned by the plaintiff in a suit instituted in the year 1941.

7. But the trial Court did not record a clear and definite finding that such tenures as are in question in this case were transferable. On the other hand, the lower appellate Court has taken the view that by local custom such tenures are inalienable. On this finding, it would have been necessary to remand the case for a fresh decision on the question of limitation, if we were of the view that the conclusion of the learned Sub-ordinate Judge that the plaintiff would have a fresh cause of action for bringing a suit on his own behalf on the death of the alienor is correct. The learned Subordinate Judge seems to have erroneously assumed that it was admitted by the defendants, or that it was their admitted case, that Chamru Uraon, who executed the mukarrari deeds in favour of defendant 1 and his brother died within twelve years of the suit. That was the case of the plaintiff; but the defendant's case, on the other hand, was that Chamru died more than twenty years before the institution of the suit. But, in the view we take of this case, it is not necessary to take that course.

8. If the conclusion of the learned Subordinate Judge that the lands in dispute belong to the village community, as alleged by the plaintiff, is correct, then certainly any member of the village community could have instituted the suit to challenge the alienation made by Chamru Uraon within twelve years of the transactions in question. But it was contended on behalf of the plaintiff-respondents by Mr. R.K. Sahay that the true position is that the land originally belonged to the village community and that it had been made over to the pahan for the time being as a remuneration for his services as such. Therefore, he

contended, each successive pahan will have a fresh cause of action on the death of his predecessor-in-office: in other words, according to his contention, the lands in dispute are vested in the pahan for the time being who renders service as village priest, and appropriates the usufruct of the lands for the time being as his remuneration. He contends further that one pahan does not claim title through his predecessor-in-office.

9. If these contentions are correct, the plaintiff's suit is not barred by limitation. But that is not the case made out ha the plaint. Prom the plaintiff's pleadings it would appear, as held in the Courts below, that the lands belong to the village community. It is nowhere stated in the plaint that the pahan is appointed by any method of election or nomination by the village community on the death or dismissal of the former pahan. Reliance was placed OH behalf of the plaintiff-respondents on the decisions in Mahomed v. Ganapati (90) 13 Mad. 277, AIR 1936 183 (Privy Council) , Gnansambanda Pandara Sannadhi v. Velu Pandaram (1900) 23 Mad. 217, and Maksudan Lal v. Niranjana Nath AIR 1940 Pat. 493. But, in my opinion, none of those cases apply to the facts and circumstances of the present case, inasmuch in those cases the transfers were not void ab initio; but in the present case it is the plaintiff's own case that the transfers in question were void ah initio. If the transfers were void ab initio the transferor himself, apart from others interested in the property, could have maintained the suit for declaring the alienation void.

10. In my opinion, the true position seems to be that the lands in question originally belonged to the village community. They were made over to the family of the pahan, who may have been one of the founders of the village, as reward for their services in the past as also as a remuneration for services to be rendered in the future as village priest. The property vests in the family of the pahan, one man of the family for the time being holding the position of the pahan, and, therefore, holding the lands as such. As already indicated, there is no allegation, nor any evidence on the record to show that each successive pahan is either elected or nominated by the village community. It appears that some member of the family, usually the eldest member, takes upon himself the execution of the duty of the village pahan, and remunerates himself and his family by the usufruct of the lands; but no person outside the family can claim to be the village pahan. So long as the family continues to have some member ready and willing to perform the duties of village pahan, neither the village community as such, nor any member of the community, can interfere with the position of the pahan. Hence, in the absence of any election or nomination of each successive pahan, the property would vest either in the family of the pahan or in the village community as a whole. In either view of the case, apart from the alienor himself, there will be some other person entitled to question the transaction of transfer of lands of such a tenure.

11. Hence in the present case, Chamru Uraon himself, or, failing him, his son during the latter's lifetime, or any other member I of the village community,

could have instituted a suit to declare the transfers void. Hence, it follows that the plaintiff had no fresh cause of action when he succeeded to the position of the pahan on his grandfather's death, whenever it may have taken place. As the transactions in this case apparently took place more than 12 years before the institution of the suit, and in one case even more than 12 years before the coming into effect of the amended Section 48, Chota Nagpur Tenancy Act, 1908, the suit is hopelessly barred by time. This conclusion is supported by the observations of their Lordships of the Madras High Court in Adinarayan Chetty v. Appan Srirangachariar AIR 1941 Mad. 217 where in similar circumstances their Lordships held that each successive holder of the office does not get a fresh period of limitation for instituting a suit for a declaration of the kind prayed for in the present case.

12. As a result of these considerations, it must be held that the judgment of the learned Munsif was more correct.

13. The appeal is accordingly allowed, the judgment and decree of the lower appellate Court set aside, and those of the trial Court restored. But, in the circumstances of the case, I would direct that each party should bear its own costs throughout.

Fazl Ali, C.J.

I agree.