

(1925) 04 PAT CK 0025
In the Patna High Court

Sarju Mahton and Others

APPELLANT

Vs

Mt. Bibi Bersatan and Others

RESPONDENT

Date of Decision : 06-04-1925

Acts Referred:

Citation : AIR 1927 Patna 242

Hon'ble Judges : Adami, J

Bench : Division Bench

Judgement

Adami, J.—The Opposite party No. 1 sued Opposite party No. 2 to 9 in a rent suit for arrears of rent respecting a certain holding. In the record of rights that holding is recorded as being the tenancy of Afzal Khan, Opposite party No. 2, and Waiz Khan, and it appears that there is a note that the present petitioners are in possession of the holding under a sale-deed from Afzal Khan and Waiz Khan. When the Opposite party No. 1 instituted the suit for rent against Afzal Khan and the heirs of Waiz Khan, the petitioners sought to be made party defendants claiming that they were the purchasers from the recorded tenants. The learned Munsif rejected the application without giving any reasons therefor, and this application is directed against that order rejecting the petition.

2. It would seem that the landlord was adverse to joining the petitioners, as defendants because he thought that such joinder would amount to a recognition of the petitioners as his tenants. But I do not think that an order from this Court directing that the petitioners should be made defendants could have the effect of the recognition of their tenancy by the landlord.

3. It is urged that the other co-sharer landlords have recognized the petitioners as tenants and have taken rent from them and granted receipts, and it appears that the Court of Wards, who were in charge of the shares of some of the co-sharers, did receive rent from the petitioners.

4. On the other side it is urged that in a rent suit the question of the transferability of a holding without the consent of the landlords should not be

fought out, but I can see no harm in an issue on the point being determined in a rent suit. It will save future litigation if the petitioners are allowed to be joined as defendants in the suit and I can see no reason why the Munsif should have rejected their application.

5. The application is allowed, the order of the Munsif is set aside and it is directed that the petitioners be joined as party defendants to the suit. Hearing fee two gold mohurs.