
(1918) 04 PAT CK 0012
In the Patna High Court

Sheikh Akbarali

APPELLANT

Vs

Gopal Prasad Chole

RESPONDENT

Date of Decision : 16-04-1918

Acts Referred:

Bengal Tenancy Act, 1885 — Section 20

Citation : 46 Ind. Cas. 556

Hon'ble Judges : Roe, J;Chapman, J

Bench : Division Bench

Judgement

Chapman, J.—In this case the defendants were recorded at the last Revisional Settlement as occupancy-raiyats in respect of the lands in suit. The suits were for recovery of possession and for a declaration that the lands were nij chas lands held as khas by the plaintiffs. The learned District Judge in first appeal decreed the plaintiff's suit for the lands in all the schedules except Schedule (gha). The plaintiff's suit was dismissed in regard to Schedule (gha). Against the first part of this decision the defendants appeal. Their contention in appeal is that the learned District Judge was wrong in holding that these lands are nij chas lands and that it followed that he was wrong in giving a decree in ejectment. The learned District Judge has relied for his finding that the lands were nij chas, on an entry in the Provincial Settlement to that effect. Section 154 of the Orissa Tenancy Act of 1913, however, would not entitle the plaintiff to a declaration that the lands were nij chas or rather proprietor's private lands unless the land was recorded as nij chas not only in the Provincial Settlement but also in the settlement between the years 1906 and 1912. In the latter settlement these lands were not recorded as nij chas; The learned District Judge, therefore, fell into an error in relying upon the entry in the Provincial Settlement. We need refer only to Clause (b) of Sub-section (1) of Section 154. In support of their case the respondents can only refer to kabuliyats of the months of May and June, 1906, in which the land purported to have been let as nij chas land. There appears, however, from the terms of Section 154 above referred to, to be a distinction between the expression nij chas and nij jot. It could not, in our

opinion, suffice to prove that the lands were private lands to produce a kaluliyat prior to August 1906, in which the lands were described as nij chas. In so far, therefore, as the learned District Judge's award to the plaintiffs declaring that the lands were nij chas is concerned his judgment and decree must be set aside.

2. It remains to consider whether the learned District Judge's decree in ejectment could be supported. The plaintiffs-respondents have contended that they are entitled in any event to a decree for ejectment. The finding of the learned District Judge is that the defendants were introduced into the land under kaluliyats of the months of May and June of 1906. Under these kabuliyats the defendants entered into an express stipulation that after the expiry of the term, they would leave the lands to the khas possession of the plaintiffs. At the date when these kabuliyats were executed by the defendants under which they were admitted to the possession of the land, Sections 20 and 21 of the Bengal Tenancy Act were in force in Orissa, there was also in force Section 7 of Act X of 1859. The latter section recognized the power to contract cut of the application of the law under which rights of occupancy could be acquired. It has not been shown to us that there was at the time when these kabuliyats were executed, any express law, under which a tenant was forbidden to contract himself out of the provisions of Sections 20 and 21 of the Bengal Tenancy Act then in force and prevent himself from acquiring rights of occupancy in the lands leased to him. The provisions of Sub-section (2) of Section 232 of the Orissa Tenancy Act of 1913 also make it clear that the Legislature, when they enacted that Act, meant to give effect to contracts made between the landlord and tenant under which tenants could be prevented from acquiring occupancy rights in land, provided the contracts had been made more than six years before the commencement of that Act. In these circumstances we are of opinion that at the time when these Kabuliyats were executed in May and June 1906, that is more than 6 years before the Orissa Tenancy Act of 1913, it was open to the defendants at the time when they took the lease of these lands to contract that they should not acquire occupancy rights in them. The express stipulation in these kabuliyats that on the expiry of term the landlord should be entitled to khas possession, must be interpreted to amount to a contract that the defendants should not acquire occupancy rights in those lands. In the Full Bench case of Pundit Sheo Prokash Misser v. Ram Sahoy Singh 17 W.R. 62 : 8 B.L.R. 165 it was said by Couch, C.J., that if a raiyat agreed expressly to give up the land at the expiration of the term of the lease that would be regarded as an express stipulation contrary to a right of occupancy. There is also the fact that in this case the raiyat described the land as nij chas, and we have been referred to a Settlement Report in which it is mentioned that the former custom was not to permit the acquisition of rights of occupancy in nij chas lands, although that custom was not given effect to by that settlement. We are of opinion, therefore, that the plaintiffs were entitled to a decree in ejectment upon the ground that the lease had expired and upon the ground that under the stipulation in the kabuliyat the defendants were prevented from acquiring occupancy rights. The suit was brought within six months of the

expiry of the term of the lease and is within time. There is no reason, therefore, why the plaintiff should not be awarded a decree in ejectment. The result is that the judgment and decree of the learned District Judge is set aside in so far as it awards a declaration that the land is nij chas, otherwise his judgment and decree is affirmed. The appeal is allowed in part. We make no orders as to costs.

Roe, J.

3. I agree.