

(1919) 07 PAT CK 0036

In the Patna High Court

Sheo Balak Singh and Others

APPELLANT

Vs

Radhey Singh and Others

RESPONDENT

Date of Decision : 29-07-1919

Acts Referred:

Citation : AIR 1919 Patna 441 : 52 Ind. Cas. 501

Hon'ble Judges : Dawson Miller, C.J.; Foster, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—This is, an appeal by the plaintiffs, the maliks of the land in suit, from a decision of the Subordinate Judge of Gaya, dated the 24th September 1917. The question in dispute between the parties is whether the defendants Nos. 1 to 5 have acquired occupancy rights in certain land the proprietary interest of which is in the plaintiffs. The learned Subordinate Judge, after dealing with the evidence in the case, has come to the conclusion, as a finding of fact, that the plaintiffs have failed to, satisfy him that the Record of Rights finally published on the 5th April 1910, which is in favour of the defendants' case, has been rebutted by the evidence adduced on behalf of the plaintiffs. That is a finding of fact by which this Court in second appeal is bound, but it is contended, in the first place, that the defendants acquired their title from an Ijaradar and that, having been put in possession of the land by the Ijaradar, their interest, whatever it may be, ceased when the Ijaradar's term expired and that the landlords were thereupon entitled to eject them, claiming as they do this land as their bakasht land. In order to support that proposition, the learned Vakil for the plaintiffs has been driven to contend that an Ijaradar has no power whatever to induct a tenant on to the land, but in support of this proposition he has been unable to produce any authority whatsoever. I have no hesitation in holding that an Ijaradar has power to induct a tenant on to the land which is the subject of his Ijara, apart from any stipulations in his document of title which may prevent him from so doing. In the present case it has not been shown that there were any such stipulations and as the defendants were settled raiyats of the village in which the land is situated, it seems to me that once they

became tenants under the Ijaradar they acquired an occupancy right in the land which they held under the Ijaradar. So far as that point is concerned, I think that this appeal must fail.

2. The next question which was raised was one of estoppel. It appears that three Ijara deeds were produced and these are dated respectively June 1894, June 1906 and January 1907. The first is an Ijara deed executed by the plaintiffs in favour of certain Ijaradars therein named. The second is a transfer of the same right by the original Ijaradars to others, and the third is a re-transfer of the same right to the present defendants. According to the description of the boundaries of the land therein transferred under the Ijara deeds it is sought to be made out that the lands in suit or some of them were in fact the lands in khas possession of the plaintiffs. The land which was the subject of the Ijaras mentioned was a survey plot numbered 550 and the boundaries of that plot on the north and east are described at the kasht of the executant; that is to say, under the first deed of the plaintiffs, and under the subsequent deeds, although the word "executant" is not used, the plaintiffs' names are mentioned. It is said that, as the defendants took a transfer of this land, they are estopped from contending that the boundaries therein described in the Ijara are not accurate. In the first place, as pointed out by the Subordinate Judge, the boundaries which are relied upon are those to the east and the north, and on looking at the survey map, it appears that none of the plots which are described as the kasht land of the maliks are amongst the 5 plots in dispute except one. Of these five Nos. 540 and 541 do not adjoin plot No. 550 at all. Plots Nos. 551 and 552 do adjoin plot No. 550 which was the subject of the Ijara but on that boundary the land is not described as the kasht land of the landlords. The other one which is No. 53) does adjoin No. 550 and it is described as the kasht land of the landlords. But, for reasons which the learned Subordinate Judge gave, he came to the conclusion that this matter was not in itself sufficient to rebut the clear evidence adduced by the Record of Rights and the way he dealt with it is this: that the original Ijara which was not granted to the defendants at all contained a description given by the plaintiffs and that clearly the defendants could not be bound by that; that the subsequent Ijaras, which were a transfer of the plot in question, were merely a repetition, so far as the boundaries went, of what was contained in the original Ijara, and that, whether they were originally right or whether they were originally wrong, there was nothing to show that at the date when the final transfer was made in 1807 the description of the boundaries therein mentioned, being merely a repetition, was accurate so far as it related to the plot in question. But it is contended that the defendants having taken this document are estopped from denying the accuracy of it. It is unnecessary to decide that question, because an estoppel, if such existed, would merely be to this extent that in the year 1907 one plot of the disputed land was in the khas possession of the maliks. Now, the Record of Rights was published long after that, in the year 1916, and it seems to me that, even if there should be an estoppel as against the defendants in this case from denying the accuracy of a document of the year 1907, that is not sufficient to

rebut the evidence of the Record of Rights published in the year 1916. For these reasons I have come to the conclusion that the finding of the learned Subordinate Judge, even if it may not have rightly decided the question of estoppel about which it is unnecessary to form any opinion, would not in fact make any difference to the ultimate decision seeing that in any event, the estoppel, if such exists, does not go really far enough. For these reasons I am of opinion that this appeal should be dismissed with costs.

Foster, J.

3. I agree.