
(1923) 07 PAT CK 0026

In the Patna High Court

Sheogobind Ram Sahu and Others

APPELLANT

Vs

Mahipat Dusadh and Others

RESPONDENT

Date of Decision : 09-07-1923

Acts Referred:

Bengal Tenancy Act, 1885 — Section 20
Limitation Act, 1908 — Section 15

Citation : AIR 1924 Patna 207 : 81 Ind. Cas. 321

Hon'ble Judges : John Bucknill, J;B.K. Mullick, J

Bench : Division Bench

Judgement

1. The plaintiffs are landlords of the village in which the disputed lands lie and on the 9th August 1919 they instituted five suits against the defendants for declaration of title and recovery of possession.
2. The defendants pleaded an occupancy right but the Trial Court found in favour of the plaintiffs and decreed the suits.
3. In appeal the Subordinate Judge of Saran has set aside the decrees of the Munsif and dismissed the suits. Hence these second appeals.
4. It appears that on the 24th February 1919 a Record of Rights was finally published showing the defendants to be occupancy raiyats of the lands in suit. The onus, therefore, falls upon the plaintiffs to show that the entry is incorrect and the Subordinate Judge, after balancing the evidence on both sides, has come to the conclusion that the plaintiffs have failed to discharge that onus. The history of the lands appears to be this. The village in which they were leased to the Banscopali factory sometime previous to 1907. It is found that previous to the expiry of their lease the factory inducted the defendants upon the lands. There is no written lease. It is presumed, therefore, that the lease must have been oral. On the 15th September 1910 the plaintiffs obtained a compromise decree against the Banscopali factory by which the factory was directed to deliver up possession of the village including the lands in suit and it is alleged that from that date the title of the plaintiffs accrued. This is no doubt correct and

if it could be proved that the plaintiffs had taken possession on or about that time or that they had taken, steps to declare the tenancy held by the defendants to be invalid as against them the defendants would not have been competent to plead that they had been holding the lands as raiyats, so as to attract the operation of Section 20 of the Bengal Tenancy Act. But no such evidence has been adduced by the plaintiffs and the learned Subordinate Judge finding that the Record of Rights shows the defendants to be occupancy raiyats and finding that the onus which rested upon the plaintiffs to show that the defendants were not entitled to the benefit of the provisions of Section 20 of the Bengal Tenancy Act had not been discharged was, in our opinion, right in deciding in favour of the defendants.

5. The suits for ejectment, brought by the plaintiffs, were lodged on the 9th August 1919 and the Trial court's decrees were passed on the 24th July 1920. Execution of those decrees was stayed from the 7th January 1921 to the 12th January 1921, and on the 15th April 1921, the appeals preferred by the defendants succeeded and the suits were dismissed. It is urged by the learned Vakil for the appellants before us, that the time between the 7th January 1921, and the 15th April 1921, should, under the provisions of Section 15 of the Indian Limitation Act, be excluded and that if that is done the defendants would not be entitled to plead, the terms of Section 20 of the Bengal Tenancy Act. But this is not the case. The Record of Rights shows that the title of the defendants was complete by the 24th February 1919 and, therefore, as the suits of the plaintiffs were not lodged till six months later, the question of excluding the period during which the execution of the decrees was stayed by injunction does not arise.

6. The learned Vakil then relies upon the case of Jogendra Singh and Others Vs. Maharaja Kesho Prasad Singh, . The facts of that case, however, were quite different and it was there held that where a lessee having been specially restricted by his lease from sub-letting zeraif land to a tenant contravenes the terms of his lease and makes such a settlement the tenant is not entitled to plead the principle laid down in the case of Binad Lal Pakrashi V. Kalu Pramanik 20 Cal. 708 : 10 Ind. Dec. (N.S.) 477 F.B. But in this case it is established that the thikedar gave a settlement which he was entitled to give and where a tenant has been inducted according to law, I think, Section 20 of the Bengal Tenancy Act will always apply. In my opinion the case of Binad Lal Pakrashi v. Kalu Pramanik 20 Cal. 708 : 10 Ind. Dec. (N.S.) 477 F.B. is still good law where a tenant has been inducted legally and bona fide and where there is nothing to show that the tenant acquired his title without knowing that his lessor had a defective title or no title at all. Here the lessor had title, the tenant was duly inducted upon the land and he is holding as a raiyat, within the meaning of Section 20 of the Bengal Tenancy Act, for a period of more than twelve years. Therefore, his occupancy right is complete and the suits for ejectment must fail. The suits are dismissed with costs in Appeal No. 1089 of 1921 only. In the other appeals there is no appearance on behalf of the respondents and there will be no order as to costs.