

(1930) 07 PAT CK 0012

In the Patna High Court

Shiva Narain Mahton and Others

APPELLANT

Vs

Chandra Sekhar Prasad Singh and Others

RESPONDENT

Date of Decision : 31-07-1930

Acts Referred:

Citation : AIR 1933 Patna 616

Hon'ble Judges : James, J

Bench : Division Bench

Judgement

James, J.—These are three applications for revision of the decision of the learned Small Cause Court Judge of Patna dismissing the plaintiff's suits. The plaintiffs are proprietors of a small share in the estate bearing T.N. 16185 on the Revenue Roll of Patna District and thikadars for a share representing about half the total interest. The defendants are proprietors of small shares in the village who are each in possession of an amount of bakasht land in excess of the share to which they would be entitled, if they held an area proportionate to their interest in the estate. Indeed it appears that these three defendants are in occupation of the whole of the bakasht land of the estate.

2. The plaintiff sued for recovery of their share off the net profit of this land as compensation for their being excluded from occupation of it. Some of the defendants set up a claim that the land in question was their raiyati land while in their capacity of proprietors. It was found that there had been no contract of any kind by which the defendants undertook to make any payment to their cosharers in consideration of their occupation of this land, and that they had not excluded from possession any cosharer who had sought to occupy any of it nor had they ousted any cosharer from possession. In these circumstances the learned Small Cause Court Judge held that the cosharers who were in possession were under no obligation to tender accounts or to pay compensation to their other cosharers, and he dismissed the suit.

3. Mr. S. Deyal on behalf of the plaintiffs-petitioners argued that where one cosharer is in possession of bakasht land to the exclusion of the other cosharers,

he is liable to pay compensation to the other proprietors on account of his exclusive occupation. He cites the decision of the Judicial Committee of the Privy Council in *Robert Watson & Co. v. Ramchund Dutt* (1891) 18 Cal 10, wherein it was held that cosharer proprietors who were in possession of a large area of land to the exclusion of the other proprietors were liable to pay to the other cosharers compensation for the exclusive use and benefit of the land. Again in *Midnapore Zamindari Co. v. Naresh Narayan Ray* AIR 1924 PC 144 there was a similar direction that the Midnapore Zamindari Co., who were in occupation of a portion of these estates in excess of their share, should pay compensation to the other party for this exclusive use of this land until partition should be effected.

4. These cases were discussed in *Chandra Kishore Chakravarty Vs. Biseswar Pal and Sachindra Kumar Goswami*, executor to the estate of Bashiram Pal and Another, . Page, J., there pointed out that in each of the cases decided by the Judicial Committee, the persons in occupation of the excessive area had definitely excluded the plaintiffs from possession to which they were entitled in the ordinary course as cosharers and he held that unless there had been a definite exclusion or ouster of the cosharers, they could not claim any share in the profit derived from the land. Page, J, quotes the remarks of Baron Parke in *Henderson v. Eason* (1886) 17 QB 761 pointing out that if one of two tenants-in-commons employs capital and industry in cultivating the common land of the estate, his co-tenant cannot fairly claim a share of the profits since he would not be responsible for meeting any portion of the cost if the speculation should turn out to be unprofitable.

5. Mr. S. Deyal suggests that if this reasoning were adopted as a justification for refusing to make cosharers in such circumstances liable to pay compensation, it might also be adopted by ordinary tenants or by trespassers.

But tenants hold their land under a definite contract or by virtue of a status, one of the incidents of which is a liability to pay rent to the landlord, and trespassers could hardly base a claim on any such reasoning. Mr. S. Deyal also suggests that the defendants in the present suit, when they set up a claim that the land of which they were in occupation constituted their raiyati holding, were thereby attempting to oust the plaintiffs from their share of this land, and therefore they ought to be held liable to pay compensation. But the defendants have entered into no contract with the other cosharers to pay any produce or any rent for occupation of this land.

6. There has been no agreement of any kind by which they are to pay compensation. There is nothing to indicate that they have at any time resisted any claim which the other cosharer might have put forward to cultivate this land and if the other cosharers in stead of taking their share in the cultivation chose to sit still and do nothing they cannot, after the land has been cultivated by these cosharers, make what is practically a claim for an account. I agree with the learned Small Cause Court Judge that these cases are governed by the decision in *Chandra Kishore Chakravarty Vs. Biseswar Pal and Sachindra Kumar Goswami*,

executor to the estate of Bashiram Pal and Another, , and these applications must be dismissed with cost.