

(1927) 08 PAT CK 0013
In the Patna High Court

Shyam Sunder Naik and Others

APPELLANT

Vs

Gobardhan Kamti and Others

RESPONDENT

Date of Decision : 11-08-1927

Acts Referred:

Citation : AIR 1928 Patna 218

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—One Tabakal Kamti had four sons: Rupan, Dahu, Chhotkan and Jhakri. Jhakri, according to the plaintiffs, had three sons: Hiranman, the eldest; Gobardhan, plaintiff 1, and Lalchand, father of plaintiff 2. It appears that the defendants second party, as landlords, obtained an ex-parte rent decree against Rupan, Dahu and Chhotkan, representing the first three branches of Tabakal Kamti's family, and Hiranman, the eldest son of Jhakri, representing Jhakri's branch. In execution of the rent decree the family property, consisting of 47 bighas, was sold at auction to the defendants first party. The plaintiffs thereupon instituted the suit out of which this appeal arises for a declaration that the decree in the rent suit above mentioned, and the sale of the properties aforesaid dated 8th May 1916, were not binding upon them, and also praying for recovery of possession of one-sixth of the land, being their share of the family property.

2. The Court of first instance decreed the suit and ordered khas possession of the land to be delivered to the plaintiffs respondents.

3. On appeal the learned District Judge confirmed the judgment and decree of the first Court. The defendants first party, that is the purchasers of the property at auction sale, have now come up in second appeal against the decision of the learned District Judge.

4. Two points are urged by the learned advocate on behalf of the appellants. The first is that the suit is barred by the special law of limitation laid down in Article 3, Schedule 3, Ben. Ten. Act It is contended, on the authority of Aminuddin

Munshi v. Ulfatunnissa Bibi 13 C.W.N. 108, that, inasmuch as the dispossession of the plaintiffs by the defendants first party was brought about as a result of the action of the landlords (the defendants second party) in obtaining a rent decree, Article 3, Schedule 3, Ben. Ten. Act must apply to this case. I do not think this contention can prevail. The ruling above referred to no doubt appears to give some support to the proposition contended for, but it appears also clear that there were special facts and circumstances in that case which led the Court to come to the conclusion that there was collusion or instigation on the part of the landlord which brought about the dispossession by the purchaser, and the decision is clearly made to rest on that ground.

5. In the case of Durgapada Panja v. Bhusan Chandra Ghose 21 C.W.N. 373, the case of Aminuddin Munshi v. Ulfatunnissa Bibi 13 C.W.N. 108 was put forward in support of the proposition that where a landlord institutes a rent suit, and in execution of a decree obtained in that suit brings the holding to sale, dispossession by the purchaser would amount to constructive dispossession by the landlord, but the contention as to constructive dispossession was not accepted by the Court. In the case of Krishna Chandra v. Satish Chandra 20 C.W.N. 872 it was again laid down that

it was not the design of the Bengal Tenancy Act to deprive a tenant of the rights that he otherwise possesses against a third person between whom and himself there was no relationship of landlord and tenant. It was only intended to deal with such rights as existed between landlord and tenant.

6. On this ground the theory of constructive dispossession was rejected. In the case of Bhadaï Sahu v. Sheikh Manowar [1920] P.H.C. 91 it was clearly laid down that the Court

will not favour the allegation of constructive dispossession in support of a plea that a suit is barred by Article 3, Schedule 3, Ben. Tan. Act; it must be shown on clear evidence that the landlord himself was the party who dispossessed the tenant.

7. Many other decisions might be cited, but I refrain from doing so, as the point appears to have been clearly settled by decisions of this Court that, in order to make the special rule of limitation laid down in the Bengal Tenancy Act applicable, it must be shown by clear evidence that it was the landlord who caused or took part in the dispossession of the tenant.

8. The next point urged is that the only member of Jhakri's branch sued was Hiranman, but that he was the sole recorded tenant, or, at any rate, that he was sued in a representative capacity and that the plaintiff's share was, therefore, liable. It is admitted that the plaintiffs were not made parties to the suit. The onus was, therefore, rightly placed on the defendants to show that Hiranman was sued in a representative capacity so as to make the rent decree binding on the plaintiffs' shares. There were several ways of proving this. First, it could have been proved that Hiranman's name alone was recorded in the sherista of the

maliks after the death of Jhakri. It might also have been proved by showing that Hiranman had been in fact put forward by the plaintiffs as their representatives. No attempt has been made by the defendants to produce the papers from the landlord's sherista to prove that Hiranman was recorded as the sole tenant nor have they succeeded in proving that Hiranman was put forward as the representative of the plaintiffs. Thus it appears quite clear that the defendants have failed to discharge the onus which lay on them.

9. It is, however, contended by the learned advocate for appellants that the mere fact that P.W. No. 2 admitted that Hiranman was the karbari of the family and paid the rent would suffice. In support of this proposition the learned advocate relies on the ruling in the case of Beradar Singh v. Bacha Mahto [1920] P.H.C.C. 9. In that case it was laid down that if a landlord desires to obtain a decree good against the land under the Bengal Tenancy Act he must ordinarily (apart from any question of representation) implead all the co-tenants including the heirs or legal representatives of a deceased co-tenant. In the course of the judgment there is an observation at p. 10, upon which the appellants rely, in the following terms:

There is no doubt that all the tenants not having been made defendants no rent decree can be passed unless it is shown that Chhatarpati Mahto was the karta of the family and was entitled to act on behalf of the other recorded tenants.

10. On the strength of this observation, it is contended that, inasmuch as in the present case it was admitted by one of the plaintiffs' witnesses that Hiranman was the karbari of the family and paid the rent, that was sufficient for the purpose of showing that the rent decree would bind all the co-tenants. This contention is not tenable. The question of representation is entirely one of fact. Whether one of several tenants can be regarded as a representative of the rest must depend on the circumstances of each case: *Chamatkari Dasi v. Triguna Nath* 17 C.W.N. 833. In the present case the defendants have not proved that Hiranman was the only recorded tenant, nor is there any proof of the fact that he was put forward as the representative of the other tenants. The question of representation was fully gone into in the Court of first instance and that Court came to the conclusion that there was absolutely no evidence on the side of the defendants on either of the points, namely, whether Hiranman's name appeared as the sole recorded tenant in the sherista of the maliks or whether he was put forward by the plaintiffs as their representative. In view of these findings it is impossible to proceed upon the solitary statement of one of the plaintiffs' witnesses which could not possibly be conclusive on the point. The appeal must be dismissed with costs.