

(1915) 06 CAL CK 0028
In the Calcutta High Court

Sidheswar Panda and Others

APPELLANT

Vs

Pitbas Gaontia and Others

RESPONDENT

Date of Decision : 01-06-1915

Acts Referred:

Citation : 37 Ind. Cas. 261

Hon'ble Judges : Walmsley, J;Newhould, J

Bench : Division Bench

Judgement

Walmsley, J.—The plaintiffs prefer this appeal. They are co-sharer Gaonias in a village in the District of Sambalpure to the extent of twelve annas. Defendant No. 1 is another co-sharer Gaontia with an interest of two annas, and he is also the lambardar Gaontia. Defendants Nos. 2, 3 and 4 are co-sharers to the extent of the remaining two annas.

2. The case for the plaintiffs is that the lambardar took proceedings in the Court of the Deputy Commissioner for the ejectment of two tenants from their lands, obtained an order for their ejectment and took possession of their land on July 21st, 1909; and then without their approval granted a lease of the land to defendant No. 5, Dibakar. The plaintiffs say that the lambardar had no authority to grant such a lease, and that they served a notice on him warning him not to grant a lease, and they claim to be put in khas possession of the land to the extent of their interest.

3. The first Court decreed the plaintiffs' suit, but this decision was reversed by the learned Subordinate Judge on appeal.

4. The suit as originally framed related to the land of a third tenant also, but in the lower Appellate Court that part of the claim was withdrawn. So we are concerned now only with the land from which two tenants were ejected under the orders of the Deputy Commissioner.

5. The lower Appellate Court has reversed the Munsif's finding about the notice said to have been sent by the plaintiffs to the lambardar, and consequently we

need not consider whether such a notice would affect the lambardar's powers.

6. The learned Subordinate Judge has found that the lambardar did grant a permanent lease of the land to defendant No. 5, and settled that defendant on the land after ejecting other tenants, and that in settling the defendant on the land he acted within the scope of his authority. We are asked to hold that this decision is wrong, and that the lambardar could neither settle a tenant on the land still less grant him a permanent lease without the consent of the go sharers, and that the plaintiffs are entitled to Khas possession. For information about the status of Gaontias and the lambardar Gaontia we have consulted Mr. Russell's Report on the Settlement of Sambalpur District, published in 1883. That contains a full account of the whole matter. It appears that the first point to be decided is the nature of the land, that is to say, whether it was included in the Gaontia's bhagra-land or was part of the land let to tenants on a rent assessed by the Settlement Department. It was cultivated land, so it must fall within one of those two classes. The Munsif does not refer to this point at all, but before the learned Subordinate Judge it is clear that the land was treated as raiyati land, that is assessed land held by raiyats, for the Judge more than once refers to it as raiyati land, and no objection is taken to this description in the grounds of appeal.

7. Now as the land was assessed land, for the rent of which the lambardar was liable to Government, it would seem to be the duty of the lambardar after ejecting one set of tenants to settle another tenant on the land as quickly as possible. As pointed out by the lower Appellate Court, the lambardar does settle tenants: Bhagirathi (P. W. No. 2) says, "Whenever any tenant surrenders, he (i.e., the lambardar, for defendant No. 5 must be a mistake for defendant No. 1) takes it; whenever any tenant has to be ejected he ejects him; * * * he gives leases to tenants for all kinds of lands." In the light of this statement by one of the plaintiffs it is clear that the lambardar was acting within the authority allowed to him by custom in settling the land with defendant No. 5. It follows that the plaintiffs cannot obtain Khas possession. It is not necessary to consider whether the lambardar could grant a permanent lease. All that is decided by the lower Appellate Court is that the lambardar had authority to make the settlement, and that, therefore, the claim for Khas possession must fail.

8. I would dismiss the appeal with costs.

Newbould, J.

9. I agree.