
(1937) 09 PAT CK 0010
In the Patna High Court

Sir Kameshwar Singh Bahadur

APPELLANT

Vs

Bibi Fatma and Another

RESPONDENT

Date of Decision : 23-09-1937

Acts Referred:

Bengal Tenancy Act, 1885 — Section 104H

Citation : AIR 1938 Patna 43

Hon'ble Judges : Wort, J;Manohar Lall, J

Bench : Full Bench

Judgement

Wort, J.—The question in this appeal is whether the so called under tenants were necessary as well as proper parties to the action. The learned Judge in the Court below has so held, and it is against that decision that this appeal is preferred. The question whether parties are both necessary and proper parties must of necessity depend upon the circumstances of the particular case. Mr. Murari Prasad in this case contends that they are not necessary parties as the judgment, if pronounced in his favour, does not bind parties who are not joined. That is, if I may say so, trite law, hut does not answer the contention in this case that the under, tenants who have been recorded as occupancy raiyats are necessary parties.

2. If the matter had been dependent upon contract, that is to say, had the rights as between the plaintiff and the defendants depended upon contract, or, to put it per. haps more precisely, had the matter concerned the general law of landlord and tenant in contradistinction to the law as provided by the Bengal Tenancy Act, something might have been said in support of the contention which Mr. Murari Prasad puts forward. It certainly would be the case there that any judgment pronounced as against the present defendants to the action would not have bound nor affected in any way the rights of the so-called under-tenants. But here we are concerned not merely with the question of the tenancy laws as provided by the Bihar Tenancy Act but more particularly with the question of status. In para. 7 the plaintiff alleges "that the defendant is an occupancy tenant and as

such his status should be "kaimi" or mokarrarinahim, etc."

3. The plaintiff then proceeds to claim the relief that

After determining and declaring the correct status of the defendants, let a decree be passed in favour of the plaintiff as against the defendant settling the proper annual rent payable by the defendant for the tenancy in suit in accordance with the instruction laid down by the Board of Revenue.

4. Needless to say that the defendants in this case are recorded as tenure-holders. Now, assuming for the purpose of argument that the plaintiff succeeded in this action, he would succeed in varying or amending the entry in the Record of Rights in this way that the defendants would be recorded as occupancy raiyats. But as we know, the under-tenants are already recorded as such. It is not possible for there to be two occupancy raiyats of the same holding and the contention of Mr. Murari Prasad is that their occupancy rights may be not as occupancy raiyats but as under-tenants with occupancy rights. It does not in the circumstances in my judgment meet the point about their being recorded as occupancy raiyats. Shortly stated therefore such a judgment, as I have indicated, would not only affect the status of the defendants but would effect the status of the so-called under tenants who have not been joined as parties to the suit. In the course of the argument the case in *Jogendra Nath v. Secy. of State* 1912. 16 C.L.J. 385 was referred to. That case was discussed in the course of the judgment in a later case *Jogendra Mohan v. Janaki Nath* A.I.R.1917. Cal. 512 where in a case not dissimilar in certain respects from the present it was held that it was not necessary to join an under-tenant, in other words the under-tenant was not a necessary party. But it is to be noted that in *Jogendra Nath v. Secy. of State* 1912.16 C.L.J. 385 there was no contest as between the under-tenant and the defendant in the action and the judgment pronounced against the defendant in the action in no way affected the status of the under-tenant, although, as it was stated, he might have been interested in the matter and possibly therefore was a proper party although not a necessary party.

5. In my judgment, in this case the learned Judge was clearly right, having regard to the fact which I have already stated that the under-tenant's status was affected, in holding that he was a necessary party. For these reasons, in my opinion, the appeal fails and must be dismissed with costs. I should have added in my observation that neither in the Courts below nor in this Court was any request made that the under-tenant be joined as a party.

6. The appeal is dismissed with costs.

Manohar Lall, J.

7. I agree. In my opinion the reliefs claimed in the plaint must determine the question whether the under-tenants are or are not necessary parties in the action framed under the provisions of Section 104-H, Bengal Tenancy Act. Mr. Murari Prasad strongly relied upon the observation of the Calcutta High Court in

Jogendra Nath v. Secy. of State 1912. 16 C.L.J. 385. It is to be noticed that the suit as framed in that case was not allowed to be proceeded with in the Calcutta High Court where Sir Bash Behary Ghosh for the appellant deleted the first two prayers in the plaint, with the result that after the amendment of the plaint the suit stood as asking for a mere declaration that the amount of rent settled under the settlement record should be altered.

8. It is obvious that for such a prayer an under-tenant was not a necessary party. The other case relied upon, viz. Jogendra Mohan v. Janaki Nath A.I.R. 1917. Cal. 512 was also a case in which no declaration was sought for as to the status of the plaintiff. The only relief claimed was that the Court would settle a fair and equitable rent.

9. In the present case the declaration asked for in the plaint is very dear and specific the plaintiff asks for a declaration that the status of the defendant should be altered. Such a suit in my opinion is not maintainable in the absence of the persons who have been recorded as occupancy raiyats of a portion of the same holding. I find another difficulty also in the way of the plaintiff and that is this: The plaintiffs sued for a declaration that the entry regarding a portion of the holding is incorrect although in my view he is aggrieved by the entry in respect of the whole holding.

10. For these reasons I agree that the appeal fails and should be dismissed with costs.