

(1945) 11 PAT CK 0012
In the Patna High Court

Tahal Mahton and Others

APPELLANT

Vs

Lachoo Mahton and Others

RESPONDENT

Date of Decision : 27-11-1945

Acts Referred:

Bihar Tenancy Act, 1885 — Section 112A, 112B

Citation : AIR 1946 Patna 298

Hon'ble Judges : Fazl Ali, C.J.;Pande, J

Bench : Full Bench

Judgement

Fazl Ali, C.J.—These four appeals have been heard together as the point involved in them is identical. Two of the appeals arise out of two title suits and the remaining two arise out of two rent suits. It has been conceded before us that the decision in the title suits on the principal point involved in them will govern the decision in the rent suits.

2. In order to understand the point involved in the title suits I will briefly refer to the facts set out in the plaint presented in the two suits. The plaintiffs in these suits were admittedly the tenants of two different holdings which are covered by khatas Nos. 812 and 367 of Mauza Akbarpur Asthawan and the defendant-appellants are admittedly the landlords of these holdings. Both the holdings are recorded in the survey khatian as bhaoli, but the case of the plaintiffs is that they were converted into nakdi on 15th Jeth 1336 Fasli by means of an unregistered hukumnama issued by the landlord directing the conversion of the bhaoli rent into nakdi at the rate of Rs. 5 in one case and Rs. 4-8-0 in the other. According to the plaintiffs this nakdi jama became payable from 1337 Fasli onwards and since then they had been paying nakdi rent at the rate stated in the hukumnama. Before the suits were instituted there was a proceeding in regard to these holdings before the Rent Reduction Officer u/s 112A, Bihar Tenancy Act, for the reduction of the rent of the two holdings. This proceeding was instituted by the plaintiffs on the allegation that the rent payable in respect of the holding was cash. The landlords resisted the claim for reduction of rent on the ground that

the rent was payable on bhaoli basis. The Rent Reduction Officer overruled the objection of the landlords and passed an order for the reduction of the rent of both the holdings and the order of the Rent Reduction Officer was upheld by the Collector in appeal. The landlord then went up to the Commissioner in revision and the Commissioner set aside the order of the Collector substantially on the ground that he had no jurisdiction to reduce the rent of a holding for which rent was payable on the bhaoli basis. The order of the Commissioner was upheld by the Board of Revenue. These facts were recited in the plaint and after reciting them the plaintiff claimed relief in the following terms:

(1) That the holding...situated within the zamindari of the defendant which is raiyati occupancy holding of the plaintiff is held on nakdi system and bears a rental of...and it be declared that the defendant has no right to realise the rental of the holding in question according to the bhaoli system. (2) That the cost of the suit be decreed in favour of the plaintiff, and (3) That any further or other equitable relief to which the plaintiff might be deemed to be entitled be decreed in his favour.

3. The Munsif who tried the suit granted a decree in favour of the plaintiffs holding that the plaintiffs had succeeded in establishing that the two holdings were held on cash rent. The decision of the Munsif was, however, reversed on appeal by the Subordinate Judge who held that the holdings in question were not held on a cash rent but on bhaoli basis. The plaintiff has now preferred two second appeals in the title suits. The landlord defendant had instituted two rent suits in respect of the two holdings which were the subject-matter of the title suits claiming recovery of bhaoli rent for certain years. These rent suits were resisted by the tenant-defendants on the ground that no bhaoli rent could be claimed as the holdings were held on a cash rental. The rent suits, however, have been decreed on the same findings as were arrived at in the title suits and now the tenant-defendant in the rent suits who are the same persons as the plaintiffs in the title suit have preferred two second appeals arising out of the rent suits.

4. The learned Subordinate Judge who was the final Court of fact in all these appeals has, as I have already stated, come to a definite finding that the holdings in question were held not on a cash rental but on a bhaoli, basis. This finding being one of fact cannot be re-opened in second appeal. But Mr. Baldeo Sahay, who appears for the appellants in all the four appeals, contends that the finding of the learned Subordinate Judge (the lower appellate Court) is vitiated by an error of record. It is urged by him that whereas the case of the landlord was that siahas were maintained even for bhaoli lands, the learned Subordinate Judge has proceeded to decide the case on the footing that no siahas were in fact maintained for such lands. It appears, however, on a careful reading of the judgment that there was sufficient material before the Court to enable it to come to the conclusion which is attacked in this Court and, in my opinion, the finding in question cannot be disturbed in second appeal.

5. A reference to the pleadings and the judgments of the Courts below will show

that in the Courts below the appellants did not attack the order of the Commissioner and the Board of Revenue holding that the Rent Reduction Officer had no jurisdiction to reduce the rent of the holdings which are the subject-matter of the present suits. In the plaint of the title suits the appellant does not rely upon the order of the Rent Reduction Officer which had already been vacated by the Commissioner and the Board of Revenue. He merely asked for a declaration to the effect that the holdings in question were held on a nakdi basis. In this Court, however, a new point has been raised. It is contended in the first place that the Commissioner and the Board of Revenue had no jurisdiction to interfere with the order of the Rent Reduction Officer and secondly, that it was necessary for the Rent Reduction Officer while dealing with these cases to decide whether the rent of the holdings in question was payable on cash or bhaoli basis. It is urged that his decision that it was payable on cash basis, whether right or wrong, was final and the civil Court had no jurisdiction to come to an opposite conclusion.

6. In support of the new point reliance was placed by Mr. Baldeo Sahay on the decision of this Court in Sri Thakur Radha Krishnaji Vs. Ramkhelawan Singh and Others, . In this case, a Bench of this Court of which I was a member upheld the decision of Rowland J. in a second Appeal No. 725 of 1942 Radha Krishnaji v. Ramkhelawan Singh 943 P.W.N. 253. The facts of that case were briefly as follows: In 1939 certain tenants had applied for reduction of their rent before a Rent Reduction Officer and the rent was subsequently reduced to Rs. 348-6-0. The landlord preferred an appeal against the order of the Rent Reduction Officer before the Collector, but the appeal was dismissed. The landlord thereupon moved the Commissioner who declined to interfere. The landlord then went up to the Board of Revenue and the Board set aside the order of the Rent Reduction Officer and reduced the rent to Rs. 505.

7. Thereafter the tenants instituted a suit for setting aside the order of the Board of Revenue on the ground that it was without jurisdiction. The suit was decreed and it was held that the Board of Revenue had no power to revise the order of the Rent Reduction Officer inasmuch as Section 112B expressly provided that the order made by the Collector on appeal from an order of the Rent Reduction Officer shall be final. The matter ultimately came up to this Court in second appeal and the decision of the Courts below was upheld by Rowland J., his decision being summarised in the head-note of that case as follows:

Where u/s 112B, Bihar Tenancy Act, it is provided that the decision of the Collector of the district or of any officer so empowered, or of the prescribed authority, on any such appeal shall be final, there is no power in the Commissioner or the Board to set aside the order of the Collector made rightly or wrongly in the exercise of jurisdiction and even if it is erroneous. It can interfere only if the order is without jurisdiction.

8. There was afterwards a Letters Patent appeal against the judgment of Rowland J. but his decision was upheld, Agarwala J., who delivered the leading

judgment in the appeal observing:

I would, therefore, hold that the case has been rightly decided by Rowland J. and dismiss the appeal with costs.

9. I agreed with the judgment of Agarwala J. but I also observed:

I would have held that the power of superintendence possessed by the Board of Revenue could be used only for administrative purpose and to the limited extent indicated in Section 224 of the Act so far as the High Courts are concerned. In any event I am absolutely certain that it cannot extend beyond the limits suggested in the judgment of Rowland J.

10. It is contended by Mr. Baldeo Sahay that in view of the judgment of the Letters Patent appeal we must hold that the decision of the Collector in the rent reduction proceeding was final and the Commissioner and the Board of Revenue had no jurisdiction to vacate it. It is also urged that if the orders of the Commissioner and the Board of Revenue are liable to be ignored, then the order of the Collector must be treated as final and inasmuch as that order was based on the view that the holdings were held on a cash rent, the civil Court had no jurisdiction to come to any other finding in this case. On the other hand the learned Advocate-General who appears for the respondents contended firstly, that the order of the Commissioner and the Board of Revenue were not without jurisdiction and that order of the Collector having been vacated, the civil Court had to come to its own finding on the point on which it was invited to give its decision and, secondly, that even if the order of the Collector is assumed to be a good order, it was open to the civil Court to decide that the Collector had acted without jurisdiction in reducing the rent of the two holdings inasmuch as the Rent Reduction Officer had no jurisdiction to reduce the rent of holdings which were not held on a cash rent.

11. For the latter proposition the learned Advocate-General relied on *Kali Krishna v. Ram Chandra* AIR 1916 Cal. 820, *Shaikh Pokhan v. Rajani Kamal* AIR 1919 Cal. 264 and *Mohesh Datta Sukla v. Sheikh Basir* AIR 1921 Cal. 530. In *Kali Krishna v. Ram Chandra* AIR 1916 Cal. 820 which was followed in the other cases, the plaintiffs had sued the defendants describing them as under-raiyats and claimed rent at the annual rate of Rs. 30. The defendants resisted the suit on the ground that they were occupancy raiyats and by a commutation order u/s 40, Ben. Ten Act, they were liable to pay rent only at the rate of Rs. 13 odd. One of the points raised in the High Court was that the order u/s 40 was conclusive between the parties and debarred the plaintiff from contending that the defendants were not occupancy raiyats but under-raiyats. But the learned Judges of the Calcutta High Court disposed of that contention as follows:

It may be conceded that the propriety of commutation, or of the amount fixed, cannot be called in question in a civil Court. But it is plain that a proceeding, u/s 40 is founded on the assumption that the tenant whose rent is sought to be commuted is an occupancy raiyat. The Legislature could never have intended

that a dispute as to the status of the tenant should be finally decided by the revenue authorities in a commutation proceeding u/s 40 and should thereafter be conclusive between the parties in the civil Court.

12. Now, I do not suggest for a moment that the second point raised by the learned Advocate General is not a substantial one but I do not propose to discuss it because in my judgment his first point is sufficient to dispose of these appeals. In my opinion, the authority of this Court upon which Mr. Baldeo Sahay relies does not support him. As has already been stated the view expressed by Rowland J. which was affirmed in appeal was that though the order of the Collector in a rent reduction proceeding cannot be interfered with on merits by the Commissioner or the Board of revenue, the Board of Revenue can vacate it if the order is without jurisdiction, in the exercise of its power of superintendence. It is true that I was inclined to the view that the power of superintendence was also of a very limited nature, but the decision of Rowland J. which was upheld in Letters Patent appeal was the final decision in the case and upon that decision it cannot be held that the order made by the Board of Revenue in the present case was without jurisdiction. The order of the Board of Revenue in substance was that the Rent Reduction Officer should not have reduced the rent of the present holdings because he had no jurisdiction to reduce the rent of bhaoli holdings. The order of the Collector in the rent reduction proceedings having been vacated by a Court of competent jurisdiction it could not stand in the way of the civil Court coming to its own independent conclusion on the question whether the holdings were held on a cash rental or on bhaoli basis.

13. As I have already stated the appellants themselves had invited the Courts below to come to a finding on that question in order to grant them the reliefs stated in the plaint and they cannot now turn round and say that they had no jurisdiction to come to the finding they have arrived at.

14. As I have already stated the finding of the lower appellate Court is conclusive and in that view these appeals must fail and must be dismissed with costs.

Pande, J.

I agree.

FV.