

*Privy Council Appeal No. 92 of 1930.*  
*Patna Appeal No. 5 of 1929.*

Bechu Singh and another - - - - - *Appellants*

*v.*

Kumar Kamakhya Narain Singh - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 29TH FEBRUARY, 1932.

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*Present at the Hearing :*

LORD RUSSELL OF KILLOWEN.

LORD SALVESEN.

SIR DINSHAH MULLA.

[*Delivered by* SIR DINSHAH MULLA.]

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This is an appeal from a judgment and decree, dated the 4th December, 1928, of the High Court at Patna, which reversed a decree, dated the 25th May, 1926, of the Judicial Commissioner of Chota Nagpur, and restored a decree, dated the 14th April, 1924, of the Subordinate Judge of Hazaribagh.

The sole question for determination in this appeal is whether the defendants-appellants are raiyats having a right of occupancy within the meaning of the Chota Nagpur Tenancy Act, 1908, in a village forming part of the Ramgarh estate situated in Hazaribagh.

The suit out of which this appeal arises was instituted by the plaintiff-respondent, who is the proprietor of the estate, against the defendants in March, 1923, to recover possession of the village. The village contains about 212 acres. The ground of the plaintiff's claim was that the defendants were tenants from year to year and they were liable to be ejected after due notice and that such notice was given.

The defendants by their written statement pleaded that the land was first reclaimed from jungle and brought into cultivation by the ancestors of Ramnath Singh, the maternal grandfather of defendant No. 1, and that it descended in due course to Ramnath Singh. They alleged that Ramnath Singh was assisted in the cultivation and management of the village by Deodutt Singh, the father of defendant No. 1, and that on the death of Ramnath Singh defendant No. 1 succeeded to the village as his heir under the Hindu law. They further alleged that after the death of Ramnath Singh, Deodutt Singh supervised the cultivation of the village on behalf of defendant No. 1, who was then a minor, and they claimed that they and their predecessors in title had held the land as raiyats and acquired a right of occupancy therein. Defendant No. 2 is the son of defendant No. 1.

Particulars of the land claimed by the defendants are given in five schedules annexed to the written statement. Schedule A comprises about 68·81 acres of land which was under their own cultivation. Schedule B contains land which was in the possession of under-tenants. The rest of the land is described in Schedules C, D and E.

The earliest document on the record is a putta dated the 21st February, 1857, granted by Munshi Roshan Lal who then held the village as a jagir from the then zemindar. By this putta the village was given in "thika ijara" to Ramnath Singh for a term of ten years "with the details that in 1914 Sambat [1857 A.D.] he will have 25 bighas land and 9 mahua trees at an annual rental of Rs. 12-8-0 in Company's coin, and from 1915 to 1923 Sambat [1858-1866 A.D.] he will have the entire mauza including uthati (culturable) and fallow lands within the boundaries of the said mauza at an annual rental of Rs. 106-4-0 in Company's coin." The putta also provided that Ramnath Singh "should cultivate (or people) the village, keep the tenants satisfied, inhabit and settle tenants therein," and that after the expiry of the lease "the mauza will be temporarily settled with none else than Chaudhuri Ram Nath Singh on properly enhanced rent, and if the money is not paid the said Munshi will be at liberty to do what he likes."

In 1877 the predecessor in title of the plaintiff granted the mauza and other villages to his youngest brother Hit Narain Singh as a jagir for his maintenance. In 1879 Hit Narain Singh gave a thika lease of the mauza to Ramnath Singh and Deodutt Singh for a term of five years at an annual rent of Rs. 106-4-0, being the same as that reserved under the putta of 1857. The lessees having failed to pay the rent, a suit was brought by Hit Narain Singh in 1883 in the Revenue Court for arrears of rent, and he obtained a decree against them. In that suit Ramnath Singh contended that he held the land as a raiyat at a fixed rent of Rs. 75 per annum, but this was found against him.

The thika lease was renewed for a further period of five years, and on the 3rd September, 1884, a kabuliyat was executed by Ramnath Singh and Deodutt Singh in favour of Hit Narain Singh whereby they agreed to give up possession of the village on the expiry of the lease and to "keep the village populated or cultivated (*abad*), and keep the tenants satisfied." This phraseology is very similar to that used in the putta of 1857. The lease was again renewed in 1889, and it expired in 1894.

In 1895 Hit Narain Singh granted a thika lease of the village to Lut Baran Singh. On the 19th July, 1895, Lut Baran Singh granted a sub-lease to Deodutt Singh for a period of five years, and a kabuliyat was executed by Deodutt Singh whereby he undertook among other things to "keep the village populated (or cultivated *abad*) and keep the tenants contented."

In 1902 Lut Baran Singh filed a road-cess return in respect of this mauza. This document is not printed in the record prepared for this Board, but it appears from the judgment of the Judicial Commissioner that Deodutt Singh and his son, defendant No. 1, were described in that document as raiyats, the former holding 90 bighas, that is, 30 acres, at an annual rent of Rs. 140, and the latter holding 24 bighas, that is, 8 acres, at an annual rent of Rs. 41. The defendants relied upon this return and upon three receipts passed by Lut Baran Singh to Deodutt Singh, one for the rent for 1902, another for the rent for 1904, and the third for the rent for 1905. In these receipts the total annual rent payable by Deodutt Singh is stated to be Rs. 194-9-6, of which Rs. 75 is shown as the rent of "raiyyati land including cesses," and Rs. 119-9-6 as rent "on account of lac and mahudam."

Lut Baran Singh's lease expired in 1905. On the 27th January, 1908, Deodutt Singh applied to Hit Narain Singh for a grant of a thika lease to him, but no lease was executed. Hit Narain Singh died in 1913 without leaving male issue, and the jagir was resumed by the plaintiff in the same year.

This was followed by proceedings for the preparation of the record of rights which was finally published in 1915. In the Khewat the defendants' right in this mauza is described as *thika bemeyadi* and as non-resumable. The entry in the Khatian is not printed in the record of proceedings, but the contents of the entry appear from the following passage in the judgment of the Judicial Commissioner :--

"The entry which was prepared at the earlier stage in the preparation of the record of rights showed 68·81 acres as the *raiyyati* holding of Deodutta. All this area is entered as *bakasht* in the finally published Khatian of the village. . . . Schedule A [to the written statement] contains the lands in his own cultivation 68·81 acres in accordance with the Khatian Ext. 17 which shows this area as in the cultivation of Deodutta."

The correctness of the Khewat entry was disputed both by the plaintiff and the defendants. The defendants maintained that the holding was raiyyati and not thika. The plaintiff contended that the tenancy was resumable, and not non-resumable.

The Subordinate Judge found that the defendants had failed to prove that the land was reclaimed from jungle by the ancestors of Ramnath Singh or that they were the original founders of the village. He held that the defendants were mere tenure-holders, and decreed the plaintiff's claim.

From that decree the defendants appealed to the Judicial Commissioner of Chota Nagpur. At the hearing of the appeal the defendants gave up their claim in respect of lands comprised in Schedule B. The Judicial Commissioner affirmed the finding of the Subordinate Judge that the village was not founded by the ancestors of Ramnath Singh, but held that the putta of 1857 was given to Ramnath Singh to cultivate a specific area of 25 bighas as a raiyat in the first year and to continue to cultivate that area in subsequent years as well as to collect rents from the raiyats in the subsequent years. He considered that the 25 bighas constituted the nucleus which by the gradual growth of the cultivated area increased to 38 acres in 1902 when the road-cess-return was filed, and increased further by similar process to 68·81 in 1914 when the Khatian was prepared. He concluded that the defendants had acquired a right of occupancy in the land comprised in Schedules A, C, D and E, and allowed the appeal to that extent.

The plaintiff appealed from that decree to the High Court at Patna. The High Court differed from the Judicial Commissioner and held that the putta of 1857 was an ordinary thika lease for the whole village and that the defendants were mere tenure-holders. They accordingly reversed the decree of the Judicial Commissioner and restored that of the Subordinate Judge. It is from that decree that the present appeal has been brought by the defendants to His Majesty in Council.

Two contentions were raised before their Lordships on behalf of the defendants. First, it was urged that the putta of 1857 was in part for the cultivation by Ramnath Singh of the specific area of 25 bighas which was until then unreclaimed, that raiyati rights accrued under that putta to Ramnath Singh, and that the road-cess return of 1902 and the three receipts passed by Lut Baran Singh to Deodutt Singh were evidence of past acquisition of those rights. Next, it was argued that even if no right of occupancy had accrued before 1900, being the year in which the last of the thika leases expired, the defendants having been in occupation of the land from 1900 to 1923, they must be deemed to have acquired a raiyati status during that period.

Their Lordships are unable to spell out of the putta of 1857 any cultivating tenancy in respect of 25 bighas or any other area. They think that the putta was a single lease of the entire village for the purpose of collecting rents and bringing it under cultivation by establishing tenants on it. The mere fact that only 25 bighas were let for the first year and the tenancy of the whole village was not to commence until the next year raises no presumption that that parcel was singled out for the purpose of cultivation

by Ramnath Singh as a raiyat. The reasons for limiting the letting area to 25 bighas during the first year of the tenancy could at best be a matter for speculation. In other respects the putta is in terms very similar to the kabuliyats of 1884 and 1895 both of which were admitted to be leases for the purpose solely of collecting rents. Their Lordships are of opinion that no right of occupancy could be founded upon the putta of 1857.

The putta of 1857 expired in 1866, and it was followed in 1879 by a thika lease of the whole village for a term of five years. The rent payable under that lease was Rs. 106-4-0, being the same as that reserved under the putta of 1857. This fact almost goes to show, if no other lease was granted to Ramnath Singh between 1867 and 1879, that he held over after 1866 under the putta of 1857. Then came a series of thika leases and sub-leases for a period each of five years from 1884 up to 1900. Being thikadars of the whole village until 1900, the predecessors of the defendants could not acquire any right of occupancy in any part of the village during that period. The entry, therefore, in the road-cess return of 1902 describing Deodutt Singh and defendant No. 1 as raiyats and the receipt for the rent for the same year passed by Lut Baran Singh to Deodutt Singh describing the land as raiyati could not be correct. The subsequent receipts for the rent for 1904 and 1905 are substantially in the same terms as that for the rent for 1902, and they do not advance the defendants' case. Moreover, all the three receipts have been found by the Judicial Commissioner to be "collusive," at least as regards the amount of rent mentioned therein, which is quite different from that in the road-cess return. No weight, in their Lordships' view, could be attached to these receipts. Nor is there any evidence of any accrual of raiyati rights at any subsequent period. Lut Baran Singh's lease expired in 1905. In January, 1908, Deodutt Singh applied to Hit Narain Singh for a grant to him of a lease of the village which again was to be a thika lease. No such lease however, was executed, but it appears from the proceedings before the Attestation Officer that Deodutt Singh was in possession of the whole village in January, 1914, though it does not appear from what date. In 1917, as appears from the judgment of the High Court, the plaintiff obtained a decree against Deodutt Singh for arrears of rent, and this was followed by a notice to quit. These facts, in their Lordships' opinion, do not establish that the defendants acquired any raiyati rights even after the expiry of the putta of 1857.

Their Lordships are, therefore, of opinion that this appeal fails, and it should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

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BECHU SINGH AND ANOTHER

vs.

KUMAR KAMAKHYA NARAIN SINGH.

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DELIVERED BY SIR DINSHAH MULLA.

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