

Privy Council Appeal No. 6 of 1932.

Patna Appeal No. 1 of 1930.

Sri Radha Krishna Thakurji and another - - - - *Appellants*

v.

Babu Raghunandan Sinha and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1934.

Present at the Hearing :

LORD BLANESBURGH.

LORD THANKERTON.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD THANKERTON.]

This is an appeal from a decree of the High Court of Judicature at Patna dated the 18th November, 1929, which reversed a decree of the Subordinate Judge at Darbhanga dated the 26th January, 1927, and decreed the plaintiffs' suit with costs.

The present suit was instituted by the respondents on the 30th April, 1925, against the appellants for ejection of the latter from an area of land in village Samartha amounting to about 101 bighas, on the ground that the respondents had acquired a right of occupancy in the lands in suit under the Bengal Tenancy Act (Act VIII of 1885), and the question in issue in the present appeal is whether they had such a right at the date of the suit.

It was conceded by the respondents before this Board that their claim to a right of occupancy depended on a lease of the lands in dispute (subject to a small exception referred to later) which was granted to them by the appellants in 1914, the terms of which are contained in a kabuliyat executed by respondent No. 1, who is the head of the Hindu family of which the respondents are the members, and dated the 14th August, 1914. That lease was for a period of nine years extending from 1322 to 1330

Fasli, that is, from 5th September, 1914, to 24th September, 1923. While the parties are in dispute whether the respondents were forcibly ejected or voluntarily ceded possession, there is no doubt that the respondents were out of possession at the date of suit.

The respondents' claim is based on section 21 (1) of the Tenancy Act, which is as follows :—

“ 21.—(1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.”

It is admitted that when they obtained the lease of 1914 the respondents were settled raiyats of the village within the meaning of the Act. The appellants maintained that the respondents had acquired no right of occupancy on two alternative grounds, viz.: (a) that no right of occupancy could attach to the lands in suit as they were the appellants' private lands within the meaning of section 116 of the Tenancy Act; and (b) that, in any event, the lands in suit were not held by the respondents under the lease of 1914 as raiyats, as they were not held for the purpose specified in section 5 (2) under the definition of raiyat, namely, “ for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners.”

The learned Subordinate Judge held that the terms of the kabuliyat showed that the lands were let to the respondents for the purpose of cultivation according to section 5, but that the kabuliyat contained an admission by the respondents that the lands were the private lands of the appellants, which was sufficient evidence to establish the fact, and he dismissed the suit. On appeal, the High Court agreed that the lands were let for the purpose of cultivation, but they differed from the learned Judge's conclusion as to private lands, and they allowed the appeal.

As regards the appellants' second contention, their Lordships agree with the decision of both the Courts below that, assuming that the lands were not the private lands of the appellants, the terms of the kabuliyat of 1914 show that they were let for the purpose of cultivation as defined in section 5 (2). The appellants founded on the clause which provides :

“ I and my heirs and representatives neither have nor shall have any sort of interest in the said land save and except to get the produce to cultivate the land and to pay the rent. I shall not change the features and status of the land, nor shall I take recourse to any illegal act or interfere in any matter with regard to the land, which may go against the wishes of the said Babu or against the provision of law.”

The extent of the operation of this clause is not very clear, but their Lordships are of opinion that, in so far as it might be said to restrict the right to cultivate, including the right to bring under cultivation, otherwise clearly conferred, this clause would

constitute an attempt to contract out of the Tenancy Act and would be ineffective. The holding must be considered as a complete unit, and there is no good reason for separating the paddy lands from the kharhur lands both of which, on the facts of this case, must be taken as being under cultivation within the meaning of the Act.

On the question of private lands, it is the duty of the Court, as provided in section 120 of the Tenancy Act, to presume that land is not a proprietor's private land until the contrary is shown. Further, the lands in suit are entered in the survey khatian, completed in 1899, as "Proprietor's bakasht," and their Lordships agree with the High Court that the "Guide and Glossary to the Survey and Settlement Operations in this District," which were published in 1907, and the "Final Report of the Survey and Settlement," published in 1926, make clear that the entry in the Record of Rights negatives the appellants' contention, and is entitled to the statutory presumption of its correctness. The report also states the term "ziráat" is locally applied to all land in the possession of the proprietor, irrespective of whether it is truly ziráat, or private land, within the meaning of the statute. For this reason, their Lordships agree with the High Court that the admission in the kabuliyat of 1914 that the lands were "Khudkasht" cannot be accepted as a clear admission that they were not only in the possession of the appellants but were also ziráat, or private land. For the above reasons, also, the judgment of this Board in *Raja Dakeshwar Prasad Narain Singh v. Gulab Kuer*, (1926) 53 Ind. App. 176, which proceeded on the evidence and admissions in that case, is not applicable to the present case.

The appellants also founded on the batwara khesra of mauza Samartha of 1853, but the most that they can get from it is that the lands in suit were then in the proprietor's possession, while the fact that other lands are therein described as ziráat, while these lands are not so described, is unfavourable to the appellants' contention. As regards the whole documentary evidence in the case, their Lordships agree with the High Court that the most that it shows in support of the appellants' contention is that from time to time they were in direct possession of the lands in suit. They also agree with the High Court that the oral evidence fails to establish that these lands were ziráat, or private land. The evidence as to how possession passed to the appellants prior to suit is inconclusive. Accordingly, their Lordships are of opinion that the appellants have failed to displace the statutory presumptions already referred to.

The plaint includes among the lands in suit survey plot No. 2139, and this is included in the decree of the High Court, but this plot is not included among the lands described in the kabuliyat of 1914. The appellants' counsel drew their Lordships'

attention to this, and respondents' counsel was unable to support its inclusion in the decree, which should therefore be varied so as to exclude this plot.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed with costs, and the decree of the High Court of the 18th November, 1929, should be affirmed, subject to the exclusion of plot No. 2139, as above mentioned.

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Year	Population
1870	1,000,000
1871	1,050,000
1872	1,100,000
1873	1,150,000
1874	1,200,000
1875	1,250,000
1876	1,300,000
1877	1,350,000
1878	1,400,000
1879	1,450,000
1880	1,500,000
1881	1,550,000
1882	1,600,000
1883	1,650,000
1884	1,700,000
1885	1,750,000
1886	1,800,000
1887	1,850,000
1888	1,900,000
1889	1,950,000
1890	2,000,000
1891	2,050,000
1892	2,100,000
1893	2,150,000
1894	2,200,000
1895	2,250,000
1896	2,300,000
1897	2,350,000
1898	2,400,000
1899	2,450,000
1900	2,500,000

In the Privy Council.

SRI RADHA KRISHNA THAKURJI
AND ANOTHER.

v.

BABU RAGHUNANDAN SINHA AND OTHERS.

DELIVERED BY LORD THANKERTON.

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