

PRIVY COUNCIL

Thakur Bhagwan Singh

Vs.

Darbarsingh

Privy Council Appeal No.54 of 1927

(Viscount Sumner, Lords Atkinson J. Sinha, Sir John Wallis and Sir Lancelot Sanderson JJ.)

06.02.1928

JUDGMENT

SIR JOHN WALLIS J.

1.The question for decision in this case is a short one. The suit was brought by the plaintiff, Thakur Bhagwan Singh who has the status of a protected thekadar under Ch. 9, C. P. Land Revenue Act, 1917, in respect of the village of Bodtara, against his nephews Khedu Singh and Darbar Singh, who are members of the joint family (of which he is admittedly manager), for possession of the entire village and of the house and compound at Bodtara, from which he had been excluded by the defendants, and as to which he claimed to be entitled to possession under Section 109 of the aforesaid Act. The defendants pleaded, among other things, that they had lived with the plaintiff in the family house at Pandaria until he and his family began to ill-treat them, and had then removed to Bodtara and had taken joint possession, along with the plaintiff, of the village and house. Whether they had a right to do so was the subject of the first issue:

Whether the plaintiff was entitled to absolute possession on the strength of his protected status certificate even though the defendants be held to be cosharers in the theka with the plaintiff.

The Subordinate Judge gave the plaintiff a decree for possession of the village and a declaration that he was entitled to remain in possession of the village so long as he was the holder of the certificate of protected status, but that as regards the house, the suit should stand dismissed as premature, and that the defendant, as against the plaintiff, should remain in possession until ousted as

the result of a suit for partition or as the result of an amicable arrangement. On appeal the District Judge found that the house was an essential adjunct of the village, and modified the decree by giving the plaintiff a decree for possession of the house as well as of the village. The case then came on second appeal before the Court of the Judicial Commissioner, who altered the decree of the lower appellate Court, granting the plaintiff exclusive possession of the village and house, into a decree for joint possession with the defendants. From this decree the plaintiff obtained special leave to 'appeal to His Majesty in Council.'

2. The position of a protected thekadar is that, under Section 108 of the Act, he holds the lands included in the theka under a lease on terms settled after inquiry by the revenue authority but executed by the proprietor (or in case of refusal by the revenue authority for him), subject to forfeiture as provided in Section 111 of the Act, one ground of forfeiture being his refusal to execute a kabuliyat or counterpart of the lease. On the expiry of the lease he is entitled to renewal under Clause (c) of Sub-Section (1) of Section 109 and under Clauses (a) and (b) of the same subsection, his tenure is made impartible and inalienable, and it is provided that on his death the succession thereto is to be regulated by the personal law of the deceased Thekadar, subject to the condition that only one person at a time shall succeed and that such person shall be chosen as therein provided. This being the position of the Thekadar, it follows, in their Lordships' opinion, that he is entitled as lessee to possession of the demised premises, at any rate in the absence of the arrangement hereafter mentioned. At the same time the Act recognises that the leasehold interest, though impartible, may nevertheless be the joint property of the thekadar and his family; and it is provided in Clause (a) of Sub-Section (1) of Section 109 that nothing herein contained shall prevent a protected thekadar or any member or members of his family who would be entitled to share in the theka or to be maintained out of its income from making any arrangement, binding on themselves only, for the joint or divided management and enjoyment of the village or part thereof.

3. It has not been suggested that there was any such arrangement binding the thekadar in this case.

4. Section 112 is as follows:

Subject to rules made under section 277, the District Commissioner may, on the application of any member of the family of a protected Thekadar who is entitled to be maintained out of its income, transfer the theka to any such member of the family who shall thereupon become the protected Thekadar: Provided that such

removal shall not deprive the protected person removed of his interest in the theka.

5. This remedy is no doubt given to the other members of the family in lieu of the right to sue for partition, of which they have been deprived in consequence of the theka being made impartible by statute. As regards the house and compound at Bodtara they were specifically claimed in the plaint, and it was not alleged in the written statement that they stood on a different footing from the rest of the village. Consequently no issue was raised and evidence recorded on the point. In these circumstances the District Judge found that the house was an essential adjunct to the village in connexion with the possession and management thereof. This was a finding with which, in their Lordships' opinion, there was no sufficient reason for interfering in second appeal. This is sufficient to dispose of the case and as the plaintiff's case in the plaint was based on his position as protected thekadar and not on his position as managing member of the joint family in respect of all their properties, it is unnecessary to consider whether he would not be entitled in that capacity also to maintain the suit as to the house and compound even if they did not go with the theka. For these reasons their Lordships are of opinion that this appeal should be allowed, the decree of the Judicial Commissioner set aside, and the decree of the District Judge restored. The appellant should have his costs in the Courts below and of the appeal. They will humbly advise His Majesty accordingly.

Appeal allowed.