

PATNA HIGH COURT

Ramsarup Singh

Vs

Singh

Letters Patent Appeal No. 108 of 1958

(H. Mahapatra and Tarkeshwar Nath, JJ.)

04.10.1958

JUDGMENT

H. Mahapatra, J.

1. This is an appeal by the defendant No. 1 under Clause 10 of the Letters Patent of the Patna High Court from a judgement passed by a learned single Judge of this Court on the 4th of October 1958, decreeing the plaintiffs' suit and setting aside the judgement and decree of the trial Court by which the suit was dismissed. Plaintiffs 1 to 9 are some of the cosharer landlords. The other plaintiffs 10 to 15 are tenants. Of them, plaintiffs 10 to 12 claimed occupancy right over the lands given in Schedule I of the plaint and plaintiffs 13 to 15 claimed such right over Schedule 2 lands. Though the suit was instituted for several reliefs in respect of the five schedules of lands narrated in the plaint, at a later stage it was only confined to the reliefs asked on behalf of plaintiffs 10 to 15 (the tenants) in respect of Schedule 1 and 2. Thus for the purpose of this appeal we have to take that the of possession of plaintiffs 10 to 15 over the lands described in Schedule 1 and 2 of the plaint. Defendants 2 to 12 were the other cosharer proprietors of tauzi No. 402 mauza Garhi Bishanpur in the district of Monghyr. Thu plaintiffs 1 to 9 and defendants 2 to 12 constituted the 16 annas proprietors of that tauzi.

2. The case of plaintiffs 10 to 15 is that the lands in Schedule 1 and 2 of the plaint belong to them as tenants with occupancy right and they have been in possession all through. A stamp paper was purchased by defendant No. 2, a cosharer landlord, with a view to executing a deed of settlement in respect of Schedule 3 lands in favour of plaintiff No. 12 on payment of a Nazrana of Rs. 900/-. The cosharer landlords, plaintiffs 1 to 8, put their signature on that blank stamp paper before it was written up and taking advantage of that, defendant No. 2, in collusion with a deed writer and other cosharer landlords, defendant's second party, got a deed of settlement in respect of the lands including those described in Schedules 1 and 2 of the plaint in the name of defendant No. 1 who was one of his creatures. Some cosharer landlords like defendants 9, 10 and 12, though mentioned in the document as executants, did not execute the same as they did not give their signatures to that. That deed had to be compulsorily registered on the 21st May, 1949, although it purported to have been executed on the 1st of December, 1947. (The document was marked as Ext. A-3 in the trial). In spite of this collusive deed of settlement, defendant No. 1 did not

succeed in taking possession of the lands in suit but to clear the cloud over their title the plaintiffs brought the suit.

3. Defendants 9, 10 and 11, some of the cosharer landlords of the defendants second party, filed a written statement supporting the plaintiffs' written statements on behalf of defendant No. 1 (alleged settlee), defendants 2 to 8 and 12 disputed the claim of the plaintiffs and pleaded that the lands in Schedules 1 and 2 were never in their (plaintiffs') possession, nor did they have any tenancy right in the same. The settlement taken by defendant No. 1 under the registered document was genuine and on behalf of all the cosharer landlords. It should be mentioned here that the suit out of which this appeal arises was instituted on the 20th of May, 1950, within a year of the registration of the deed of settlement in the name of defendant No. 1.

4. The trial Court, as I have said before, dismissed the plaintiffs' suit for declaration of title and confirmation of possession as they failed to establish their tenancy right over the lands described in Schedules 1 and 2 of the plaint. According to it also defendant No. 1 failed to establish the genuineness of the settlement as alleged to have been made in his favour. Against this judgment, a first appeal was brought to the High Court in which it was found, mostly on the basis of the rent receipts (Exts. 2 and 3 series) that plaintiffs 10 to 15 were the tenants in possession of the suit lands. The oral evidence on the plaintiffs' side was also accepted. The defense oral evidence was not accepted either by the trial Court or by the learned Judge.

5. In this Letters Patent appeal the only point canvassed was that the finding of the learned Judge of this Court about the plaintiffs 10 to 15's possession over the suit lands as tenants was not correct. In other words, the finding of fact recorded by the appellate Court was sought to be challenged before us. The view of the learned Judge that Exts. 2 series, the Chithas, and Exts. 3 series, the rent receipts, were genuine documents and they coupled with the oral evidence of several witnesses established the plaintiffs' title and possession was a clear finding of fact. To me it appears that the scope of a Letters Patent appeal does not yield to a challenge to such finding of fact. No doubt, Clause 10 of the Letters Patent of this High Court provides for an appeal against a judgment in a first appeal passed by a single Judge, but its ambit cannot be more extensive than that of an appeal against the appellate judgment and decree of a Court subordinate to the High Court. Long before the Letters Patent was created, the Code of Civil Procedure was in the field and the scope of second appeals to the High Court was well defined under Section 100 of that Code. Clause 10 of the Letters Patent will be taken to have been provided in that context; otherwise an absurd situation will arise, such as, the limits of interference by a High Court in a second appeal from a decree of a subordinate Court will be much less, while that scope against a decree of a single Judge of the High Court will be wide and circumspective like that in an appeal from an original decree. Viewed in this light, the finding of fact arrived at by the learned Judge of this Court cannot be assailed in the Letters Patent appeal unless it is shown to be based on no evidence or inconsistent with any particular position in law. Learned Counsel appearing for the defendant appellant did not point out any such thing against the judgment under appeal.

6. Under clause 10 of the Letters Patent I there is also a provision for an appeal against the judgment passed by a single Judge of the High Court in a second appeal provided the Judge concerned grants leave for that purpose declaring that the case is a fit one for an appeal. No restrictions in regard to the scope of interference in such a Letters Patent appeal is mentioned in

that clause. For that reason, it cannot be argued that the appeal will be in respect of every-thing arising in that case, or that the Court can interfere with any or all the findings of fact that may have been concurrently held by the three Courts through which the case would have passed before. True it is, that the Code of Civil Procedure has not been made applicable in terms to Letters Patent civil appeals. Clause 29 provided authority for the High Court to make rules and orders for regulating its practice and for adapting the Code of Civil Procedure to all proceedings in its testamentary intestate and matrimonial jurisdiction although clause 30 enjoined the application of the Code of Criminal Procedure to the proceedings in all criminal cases in the High Court other than those in original jurisdiction. Nevertheless, the salutary canons about the scope of interference in the different appellate jurisdictions of the High Court as provided in the Code of Civil Procedure or otherwise accepted cannot be ignored while dealing with an appeal under the Letters Patent. A Full Bench decision of this Court - *Ramji Singh v. Mt. Chhulghana Kuer*¹, held that the rule made in Chapter VII of High Court Rules about the admission of Letters Patent appeals against the decision of a single Judge in first appeal was justified. That means, though an appeal is provided for under Clause 10 of the Letters Patent, it can be controlled at an initial stage without hearing the appeal in full. It is thus put at par with the appeal provided for in the Code of Civil Procedure.

7. The comments made by learned Counsel for the defendant-appellant against the Chithas (Exts. 2 series) and rent receipts (Ext. 3 series) which were accepted by the learned Judge of this Court as genuine are not tenable. He argued that the Chithas showed payment of produce rent from 1934 till 1945 with one or two years in the interval missing. The oral settlement alleged to have been taken by the plaintiffs 10 to 15 was between 1921 and 1926. Nothing was produced by them at the trial to show that they paid produce rent to the landlords from that time till 1934. It is not unusual that rent receipts of very ancient time are not preserved carefully, particularly when there was no dispute over the tenant's possession at any such time. If the landlord did not interfere with the tenant, he will go on with his possession and will not anticipate, for no clear reason, any trouble in future to safeguard against which, he would make special endeavour to retain evidence of his relationship with the landlord. The Chithas produced in the names of plaintiffs 10 to 12 were of the years 1938, 1940, 1942, 1943, 1944 and 1945 marked as Exts. 2 to 2(e). The other exhibits of that series in the names of plaintiffs 13 to 15 were of the years 1934, 1937, 1938, 1939, 1940, 1942, 1943 and 1945. All these Chithas were written by a person who was admittedly the Patwari of the landlords. He was not, however, examined and that was one of the criticisms against these chhithas. When the Chithas were proved to be in the writing of that Patwari, it was not further necessary for the plaintiffs to examine him. No one on the defendants' side denied the writing of that Patwari Gaya Lal. Exts. 3 series are the rent receipts. Of them. Ext. 3(a) was granted by defendants 9 to n, co-sharer landlords for the year 1947-48, Ext. 3(b) for the same year by plaintiff No. 8 and Ext. 3(0) by plaintiff No. 1 for the same period. Exts. 3(d) to 3(f) were in respect of other lands for the year 1939. 1941 and 1944. The trial Court thought that the very look of the Chithas and the rent receipts gave an impression that they were fabricated at a later date. Neither the learned Judge of this Court nor ourselves could have that impression by the look of these documents. The Chithas particularly look very ancient. All the rent receipts (Exts. 3 series) were in respect of land in Schedule 2 which was claimed by plaintiffs 13 to 15. Learned Counsel commented that those rent receipts did not support the claim of plaintiffs 10 to 12. The rent receipts were of only one year 1947-48. Prior to that the Chithas evidenced the payment of produce by way of rent for six years at least, 1938 to 1945, Exts. 2 to 2(e). Such payment was made by plaintiffs 10 to 12 and

that in respect of their land in Schedule 1. Once these Chithas are accepted as genuine, they go a great way to prove the possession of plaintiffs 10 to 15. It is interesting to note here that P.W. 6 who proved Exts. 2 series and 3 series documents was not at all cross-examined by the contesting defendant No. 1. When the documentary evidence is in support of the plaintiffs, their oral testimony gains substantial corroboration. Viewed in that light, the learned Judge's acceptance of the oral evidence given on the side of the plaintiffs cannot be assailed.

8. The result is that this appeal is bound to fail and therefore dismissed with costs to plaintiff-respondents.

Tarkeswar Nath, J.

9. I entirely agree with the observations made by my learned brother with regard to the scope of a Letters Patent Appeal directed against the judgment and decree passed by a learned Judge in a First Appeal. Finding of fact arrived at by a learned Judge while deciding a First Appeal should not be interfered with unless there is a gross error in the judgment. The main question which arose for consideration in this case was as to whether plaintiffs 10 to 15 had taken settlements of the lands in question. Learned Judge on a consideration of the oral and documentary evidence believed their case of settlement and possession and that conclusion is supported by the evidence referred to by my learned brother. The appeal of defendant I must, therefore, be dismissed with costs payable to respondents 1st party.

Appeal dismissed.

Cases Referred.

¹ AIR 1958 Pat 655 (FB)