Privy Council Appeal No. 43 of 1920.

Patna Appeal No. 76 of 1917.

Mahanath Jagarnath Dass - - - - - - - *Appellant*

v.

Janki Singh 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 JANUARY, 1922.

Present at the Hearing:

LORD BUCKMASTER.
LORD CARSON.
SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 24th July, 1917, of the High Court at Patna, which dismissed the plaintiff's suit to eject the defendant No. 1, Janki Singh, from certain land in Bihar. The suit was dismissed by the High Court on the ground that it had not been brought within time. The land in question is small in extent and in value, but the question of limitation involved is of importance in districts to which the Bengal Tenancy Act, 1885, as amended by the Bengal Tenancy (Amendment) Act, 1907, applies.

The land in question is within the meaning of Section 116 of the Bengal Tenancy Act, 1885, proprietor's private land known in Bengal as khamar, nij, or nijjot, and in Bihar as ziraat, nij, sir or khamat. The plaintiff is the proprietor of the land, as was his predecessor in title before him. Janki Singh held the land as a tenant under a lease which had been granted

by the predecessor in title of the plaintiff for a term of nine years, which expired on the 31st May, 1912. On the expiration of the term the plaintiff demanded possession of the land, but Janki Singh refused to quit and give up possession; hence the suit in which this appeal has arisen. The suit was brought on the 5th December, 1912, in the Court of the Munsiff of Begusarai in the District of Bhagalpur. The only question which it is now necessary to consider is—Was the suit brought within time? That question depends on whether the period of limitation applicable in this case is that prescribed by Article I (*a*) of Schedule III of the Bengal Tenancy Act, 1885, which for suits "to eject a non-occupancy *raiyat* on the ground of the expiration of the term of his lease," is six months from the expiration of the term, or is that prescribed by Article 139 of Schedule I of the Indian Limitation Act, 1908, which is twelve years from the determination of the tenancy.

In his plaint the plaintiff alleged that the land in question was his *khudkasht* land, prayed for a declaration that the land was his *khamat* land, and that he was entitled to possession, and asked for a decree for possession, and for mesne profits. In his written statement Janki Singh denied that the land was *khamat khudkasht* land of the plaintiff, alleged that plaintiff's claim for a declaration that the land was his *khamat khudkasht* was barred by limitation, and alleged that the land was *raiyati-mal* land in which he had a right of occupancy. It is to be noticed that Janki Singh in his written statement did not suggest that he was a non-occupancy-*raiyat* or had any right of a non-occupancy-*raiyat* to resist the plaintiff's suit to eject him. Janki Singh in his written statement was apparently relying upon a failure of the plaintiff at the trial to prove that the land was the plaintiff's private land as proprietor, his *khamat ziraat* land.

The fifth issue as fixed by the Munsiff was "whether any part of the claim is barred by limitation?" In his judgment the Munsiff stated that the fifth issue had been "left untouched in arguments" by Janki Singh's pleader, and he decided the issue of limitation against Janki Singh.

The seventh issue, which was considered by the Munsiff to be the most important issue in the case, was not directed to the question of limitation, but had indirectly a bearing on that question: it was, "Whether the land in suit is the *khudkasht* of the plaintiff, or the *raiyati-jote* of the defendant first party." The Munsiff's finding on that issue was that the land in suit was "*khudkasht* of the plaintiff and not *raiyati-jote* of" Janki Singh. It is not quite clear what the Munsiff precisely meant by "*khudkasht* of the plaintiff." He probably meant land cultivated by the plaintiff as his own. In the plaint the land in question was alleged to be the plaintiff's *khudkasht khamat* land—that is, *khudkasht* private land of the plaintiff as proprietor. In his observations on the sixth issue the Munsiff apparently treated *ziraat* and "*khudkasht* of the Mahanth (the plaintiff) alone" as convertible terms. In his observations on the seventh issue the Munsiff mentioned

Section 120 of the Bengal Tenancy Act, 1885, which relates to the recording by a Revenue Officer of a proprietor's private land (*khamar, khamat, ziraat*, etc.). On the whole, their Lordships are of opinion that the Munsiff by his finding on the seventh issue meant that the land in question was the proprietor's private land (*khamat, ziraat*), and was not land in which Janki Singh had, or could have, a right of occupancy. The Munsiff had the Bengal Tenancy Act, 1885, before him, and he should have used the terms specified in the Act and not terms which might be ambiguous. The Munsiff, on the 31st March, 1914, gave the plaintiff a decree for possession, and dismissed his claim for mesne profits.

From that decree Janki Singh appealed to the Court of the Subordinate Judge of Monghyr on the ground that the suit was barred by limitation, and that the land was not *khamat* (private, *ziraat*) land of the plaintiff. The plaintiff entered a cross-appeal against the dismissal of his claim for mesne profits. The Additional Subordinate Judge, before whom the appeals came, found that the land was *khamat* land, and that Janki Singh had no right to hold over, after the expiration of the term of his lease. In his judgment he said : " It is faintly urged that the suit is barred by limitation. But there is nothing to show that the rule of limitation of six months applies to the case. Moreover, the character of the land being *khamat* no limitation arises in the case," and he, on the 29th March, 1915, made a decree dismissing Janki Singh's appeal, and in the cross-appeal decided that the plaintiff was entitled to mesne profits and directed the Munsiff's Court to assess the mesne profits in the executing of the decree. The rule of limitation which the Additional Subordinate Judge held did not apply as the land was *khamat* land was that of Article I (*a*) of Schedule III of the Act.

From the decree of the Additional Subordinate Judge Janki Singh appealed to the High Court at Calcutta. The appeal came on for hearing as a second appeal before Mr. Justice Atkinson in the High Court at Patna. The only grounds of the appeal to which it is now necessary to refer are that the suit was barred by limitation : that the land in question was not *khamat* land ; and that the Additional Subordinate Judge had erred in decreeing costs and mesne profits. The ground that the land in question was not *khamat* land was concluded by the finding of fact of the Additional Subordinate Judge. The ground that the Additional Subordinate Judge had erred in decreeing costs and mesne profits does not appear to have been supported in the High Court. In the course of the arguments in the appeal a decision of Mookerjee and Beachcroft JJ., in *Ganpat Mahton and others* v. *Rishal Singh and others* (20 Cal. W.N. 14), in which they had held that Article 1 (*a*) of Schedule III of the Bengal Tenancy Act, 1885, did apply to *ziraat* land, and the decision of Woodroffe and Chaudhuri JJ. (overruling a decision of Newbould, J.), in *Dwarka Nath Choudhuri and others* v. *Tafazar Rahman Sarkar and another* (20 Cal. W.N. 1097) in which they had held that Article I (*a*) did not apply to

khamar lands, were cited. Mr. Justice Atkinson rightly regarded the decision of Mookerjee and Beachcroft JJ. as academical, as those learned Judges had already in the appeal before them decided that the land there in question was not *ziraat* land. Mr. Justice Atkinson agreed with the decision of Woodroffe and Chaudhuri JJ. that Article I (*a*) of Schedule III did not apply to private land of a proprietor, and by his decree of the 7th February, 1917, dismissed Janki Singh's appeal with costs in the High Court, in the lower appellate Court, and in the Munsiff's Court.

From that decree of Atkinson J. Janki Singh appealed under the Letters Patent of the High Court, and as the appeal raised a question of limitation of considerable importance, it was heard by a Full Bench of the High Court at Patna, constituted of Sir Edward Chamier C.J., Chapman, Mullick, Roe, and Jwala Prasad JJ. These learned Judges differed on the question of limitation, the Chief Justice, Mullick, and Roe JJ., holding that Article I (*a*) of Schedule III of the Bengal Tenancy Act, 1885, applied, dismissed the suit as barred by limitation. On the other hand, Chapman and Jwala Prasad JJ. held that the Article did not apply. Each Judge gave his own reason for his conclusion, and some of the judgments contain much historical information.

Although the question as to whether this suit, when it was brought on the 5th December, 1912, was or was not barred by limitation must depend on the true construction of the Bengal Tenancy Act, 1885, as amended by the Bengal Tenancy (Amendment) Act, 1907, some historical information as to the origin and development in Bengal of rights of occupancy in agricultural land held by *raiyats* is interesting. It appears that in the Permanent Settlement of Bengal the proprietor's private lands (*ziraat*, demesne lands), which were kept for his own and his family's cultivation, as distinguished from his lands which were usually let to *raiyats*, were recognised ; that it seems to have been the policy of the Government for many years that no rights of occupancy in such private lands should be acquired by *raiyats* ; and that the legislature for the first time by Section 6 of Act X of 1859 defined how a right of occupancy could be acquired. By Section 6 of Act X of 1859 it was further enacted " but this rule (as to acquiring a right of occupancy) does not apply to *khamar*, *nijjot*, or *sir* land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year. . . ."

The Bengal Tenancy Act, 1885, repealed Act X of 1859, and by Chapter V it was enacted how rights of occupancy could be acquired by *raiyats*. Chapter VI apparently created the " non-occupancy-*raiyat*," and for the first time conferred upon him a status and rights, but by Section 116 of that Act it was enacted :—

> " 116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khamar, nij or nijjot, and in Bihar as ziraat, nij, sir or khamat, where any such land is held under a lease for a term of years or under a lease from year to year."

By Section 40 of the Bengal Tenancy (Amendment) Act, 1907, Section 116 of the Bengal Tenancy Act, 1885, was amended, and as amended it is as follows :—

> "116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, lands acquired under the Land Acquisition Act, 1894, for the Government or for any Local Authority or for a Railway Company, or belonging to the Government within a cantonment, while such lands remain the property of the Government, or of any Local Authority or Railway Company, or to a proprietor's private lands known in Bengal as khamar, nij or nijjot, and in Bihar as ziraat, nij, sir or khamat, where any such land is held under a lease for a term of years or under a lease from year to year."

Section 45 of the Bengal Tenancy Act, 1885, which was in Chapter VI as it stood before the amending Act of 1907 was passed, was as follows :—

> "45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the *raiyat* not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term."

As that section contained a prohibition against instituting a suit unless a notice to quit had been served six months before the expiration of the term, it was properly inserted in Chapter VI and not in a schedule of limitations. Section 45 was repealed, and the period of limitation which had been prescribed by it was by the Bengal Tenancy (Amendment) Act, 1907, inserted in Schedule III as Article I (*a*). As Section 45 stood in Chapter VI no one could have doubted that the non-occupancy-*raiyat* to whom it referred was a person who had obtained the status and rights of a non-occupancy-*raiyat* by reason of his having been a person upon whom that status and those rights had been conferred by Chapter VI.

But it would appear from the judgments of the Chief Justice, and Mullick, and Roe JJ., that those learned Judges considered that the effect of the repeal of Section 45 and the insertion of Article I (*a*) in Schedule III was to extend the limitation of six months to suits to eject persons who had not been non-occupancy-*raiyats* within the meaning of Section 45. It is quite clear that Article I (*a*) did not create or confer upon any one the status or rights of a non-occupancy-*raiyat*, and did not extend the limitation of six months to suits to eject persons who had not been non-occupancy-*raiyats* within the meaning of the repealed Section 45. The non-occupancy-*raiyat* of Article I (*a*) must be a person who before his term had expired had acquired the status and rights of a non-occupancy-*raiyat*.

The crucial question in this case is—When, if at all, and how had Janki Singh acquired before the 31st May, 1912, the status and rights of a non-occupancy-*raiyat*? He had not acquired that status or those rights under Chapter VI, as that Chapter does not apply

to the private lands of a proprietor, and it appears to their Lordships that it was only under Chapter VI that the status and rights of a non-occupancy-*raiyat* could be acquired.

The learned Chief Justice apparently was of opinion that Janki Singh had acquired the status and rights of a non-occupancy-*raiyat* by virtue of the definition of a "tenant" in Section 3 (3) of the Bengal Tenancy Act, 1885, read in conjunction with Section 4 (*c*) of that Act. As the decisions of the Chief Justice deservedly command respect, their Lordships will now in conclusion refer to Sections 3 (3) and 4 (*c*). Section 3 (3) is as follows: –

> "3 'Tenant' means a person who holds lands under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person."

That is merely a definition. That definition applied to the position of Janki Singh during the continuance of the term for which he held the land, and did not apply to Janki Singh's position after his term had expired, as then, in the circumstances of this case, Janki Singh became a trespasser liable to be ejected.

Section 4 of the Act is as follows: –

> "4. There shall be, for the purposes of this Act, the following classes of tenants (namely) :—
>
> "(1) Tenure-holders, including under-tenure-holders,
>
> "(2) Raiyats, and
>
> "(3) Under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats;
>
> and the following classes of raiyats (namely) :—
>
> "(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
>
> "(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
>
> "(*c*) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy."

Section 4 was merely a section specifying the classes of tenants to which the Act applied; it did not confer upon any tenant a status or any right, that was done by Chapters III, IV, V, VI, and VII. Section 3 (3) and 4 did not separately or conjointly create or confer upon any one any status or any right. With reference to (*a*) and (*b*) of Section 4 the Chief Justice correctly said that Janki Singh was not a *raiyat* holding at a fixed rate or an occupancy-*raiyat*, and then continued: "*Prima facie* he was a non-occupancy-*raiyat*." But the Chief Justice did not suggest how or when Janki Singh had obtained the status and any right of a non-occupancy-*raiyat* in the land in question. The mere fact that Janki Singh had been for a term a tenant of private land (*ziraat* land) of the plaintiff and had not been a *raiyat* holding at fixed rates or an occupancy-*raiyat* did not raise any presumption that he had acquired the status or the rights of a non-occupancy-*raiyat*. It is obvious from a passage which occurs towards the

conclusion of his judgment that the Chief Justice doubted that it had been intended that Article 1 (*a*) of Schedule III should apply to such a case as this. The passage is as follows :—

> "I think it is doubtful whether the legislature intended by the amendments made in 1907 to compel a landlord to sue for ejectment of a tenant of his private land within six months of the termination of the lease held by the tenant, and it may be that the result of holding that a *raiyat* of *ziraat* land is or may be a non-occupancy-raiyat will be that landlords will be placed in a less favourable position than the framers of the Act intended, but we must take the Act as we find it, and on a consideration of the Act as it now stands it appears to me that the only possible conclusion is that Article 1 (*a*) of Schedule III applies to such a suit as the one now before us."

Their Lordships are of opinion that Article 1 (*a*) of Schedule III of the Bengal Tenancy Act, 1885, does not apply to suits to eject persons who were not in law non-occupancy-*raiyats* of the land, and consequently does not apply to this suit, and that the suit was brought within time, and they will humbly advise His Majesty that this appeal should be allowed ; that the decree of the High Court of the 24th July, 1917, should be set aside with costs ; and that the decree of the 7th February, 1917, should be restored. Janki Singh must pay the costs of this appeal.

In the Privy Council.

MAHANATH JAGARNATH DASS

v.

JANKI SINGH AND OTHERS.

DELIVERED BY SIR JOHN EDGE.

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