

Privy Council Appeal No. 101 of 1930.

Patna Appeal No. 33 of 1928.

Sri Chandra Churdeo and others - - - - - *Appellants*

v.

Laldhari Prasad 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 28TH JULY, 1932.

Present at the Hearing :

LORD WRIGHT.

SIR JOHN WALLIS.

SIR DINSHAH MULLA.

[*Delivered by* LORD WRIGHT.]

The action out of which this appeal arises was instituted on 30th September, 1921, and was for possession of certain lands, 48 *bighas*, and some odd *cottahs* in *mauza* Naya Gaon. The plaintiffs, now the first two respondents, claimed their proportionate share as purchasers under deeds of July, 1921, whereby they purchased a 12 annas' share in the *mauza*. Appellants, as defendants, resisted the claim for possession on the ground that the disputed lands were *rayati* holdings, of which they were tenants, the title under which as transferees they held dating back many years and having been recognised in the *Khatian* of 1902. For present purposes the history of the relevant village titles may be traced back to 1882, when the *zemindars*, who were throughout absentee landlords, began to grant certain leases to a Mr. Crowdy, who started an indigo factory in the *mauza*. He or his successors may be referred to herein as the Factory, the name by which it was called being Bheriahi. The leases included a permanent lease of 23 *bighas* (not material in this case), on which the buildings were erected, and various other *thika* leases. Under these latter

leases there was continuous possession by the Factory or its mortgagees or transferees until September, 1909. Some of these leases did not actually expire till September, 1910, but that distinction appears to have been overlooked. During the period in which the Factory were in possession as *thikadars*, they acquired by purchase the occupancy rights over the 48 *bighas* now in dispute, and these rights were recognised in the *Khatian* of 1902. On the 5th April, 1909, the appellants' father was put into possession of these rights under the circumstances now to be detailed. The Factory had granted two separate mortgages, one of 7th July, 1896, to the appellants' grandfather, who on 20th April, 1898, obtained a decree on the mortgage for Rs. 17,238·6 and future interest; the other mortgage was given in 1894 to certain lenders, who on 7th November, 1899, assigned it to Finlay, Muir & Co. About 1902 Finlay, Muir & Co. entered into possession as mortgagees and brought a suit for foreclosure. Disputes arose as to priority between Finlay, Muir & Co. and the appellants' predecessors. These disputes were finally compromised on the 18th March, 1909, on the terms that Finlay, Muir & Co. should convey the whole property of the Factory to the appellants' father, free of all encumbrances, for Rs. 5,000, whereupon the appellants' father was put in possession, Finlay, Muir & Co. having foreclosed with that object. A formal conveyance to the appellants' father (since deceased) was executed to give effect to the compromise on the 8th February, 1910. His rights are now vested in the appellants. Meantime, in September, 1909, the *zemindars* had granted a lease as on the expiry of the Factory's leases of the 12 annas interest in the *maruza* to Mahant Lachman Dass and Bhauna or Mona Singh, and in November, 1909, a further lease of 2 annas to Parmeshwar Jha. A certain discrepancy in the interest so leased as compared with the entire holding may be disregarded and was not relied on at the hearing of the appeal. It was agreed that there was no question of parcels. These leases expired in September or November, 1918, being each for 9 years. By deeds dated the 2nd July, 1921, and the 22nd July, 1921, the proprietors of shares aggregating 12 annas sold their shares to the plaintiff-respondents, who instituted the present action on 29th September, 1921, having been refused possession by the appellants. The case was heard before the Subordinate Judge of Monghyr, who gave judgment on the 31st May, 1924. He found that the disputed lands were lands in which the Factory had acquired a right of occupancy and were not *bakasht* lands, and he decided in favour of the appellants on the ground of recognition: though he decided against the appellants on their plea that there was a custom admitting that occupancy rights could be transferred without the consent of the landlord, he held that that plea of custom was immaterial because Finlay, Muir & Co. having succeeded to all the rights of the Factory, including the occupancy rights in the lands in question, could transfer to the appellants' predecessor

those occupancy rights, and being for this purpose in law immediate landlords of the *rayat*, their consent (being a consent to their own act) was implied. He decided against the appellants' plea that the suit was barred by limitation; he also decided that Section 22 (3) of the Bengal Tenancy Act of 1885 did not affect the appellants' rights, nor did any principle of merger apply. He dismissed the suit by a decree dated 31st May, 1924.

This decree was on appeal set aside by the High Court of Judicature at Patna. The Judges, by a concurrent finding, held that the Factory had acquired a right of occupancy in the disputed lands by purchase from the original tenants; they agreed with the Subordinate Judge that no custom of transferability had been proved; but disagreed with him on the question of recognition and held the appellants had not been recognised as tenants. On that ground they held that the respondents were entitled to succeed. The present appeal to His Majesty in Council is from that decree.

It was not contested before this Board that if the appellants were recognised as occupancy tenants by the then *thikadars*, their rights of occupancy must prevail. On this decisive issue their Lordships are in agreement with the determination of the Subordinate Judge. The only document relied on by the appellants was a rent receipt: on its face it was dated the 13th January, 1912, and was in respect of the year, September, 1909, to September, 1910. It stated the tenant to be Babu Narain Prasad, the appellants' father, and purported to be in respect of the lands now disputed, stating the landlords to be the three *thikadars*, Mahanth Lachman Dass, Parmeshwar Jha and Babu Mona Singh; it purported to be signed by Lachman Dass by his own pen, and by Mona Singh and Parmeshwar Jha "by my own pen" (that is, by Mona Singh). It was countersigned by Lalji Lal, the *patwari* or village accountant. The Subordinate Judge was satisfied of the genuineness of that receipt, and their Lordships prefer his conclusion on this point to that of the Judges of the High Court. The Factory had acquired a right of occupancy in the lands, and the lands had been for many years in their possession, and then in the possession of the mortgagees, Finlay, Muir & Co., and then in uninterrupted sequence in that of the appellants or their predecessor in title: rent was admittedly received from the appellants or their father in respect of the permanent lease of the 23 *bighas* by the three *thikadars*, and it is difficult to believe that the latter would have acquiesced in the appellants or their predecessors retaining possession of the disputed lands all these years (as in fact was the case) without paying rent. The evidence was that Parmeshwar Jha's share was collected with his authority by the other two *thikadars*, and indeed he does not sign the receipts for the rent under the permanent lease. The objection that other receipts might have been produced is a two-edged argument. The High Court Judges comment on the fact that

Lalji Lal was not called, but it was proved at the trial that he was dead. No one of the three *thikadars* came forward to deny the receipt. But if the receipt was genuine, it must, in the opinion of this Board, be not merely a recognition of some tenancy, but of a *rayati* tenancy: the true effect of an act of recognition must depend on the surrounding circumstances: in the present case it was beyond question that for very many years the disputed lands were treated as lands in which the Factory had a right of occupancy. This appears clearly in the *Khatian* of 1902. Acceptance of rent in all the facts from the appellants or their predecessors in title, who held in unbroken sequence from the Factory, can only, in their Lordships' judgment, amount to a full recognition of their rights as occupancy *rayats*.

This conclusion is sufficient to dispose of the case, because the principle has been admitted in this case that recognition, apart from other grounds, is sufficient proof of title. It is unnecessary for this Board to express an opinion on the general correctness of the principle so admitted or on the question whether Section 22 (3) of the Bengal Tenancy Act, 1885, applies to the case.

In the result their Lordships are of opinion that the appeal should be allowed and the appellants have their costs of this appeal and also their costs in the Courts below, the decree of the Subordinate Judge being restored. Their Lordships will humbly so advise His Majesty.

to the State Council

1942

to the State Council

to the State Council

to the State Council
1942

In the Privy Council.

SRI CHANDRA CHURDEO AND OTHERS

vs.

LALDHARI PRASAD SINGH AND OTHERS.

DELIVERED BY LORD WRIGHT.

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