

AIR 1928 Patna 88

Patna High Court

Case No: None

Mt. Gomia

APPELLANT

Vs

Nanhkoe Singh and
OthersRESPONDENT

Date of Decision: Aug. 11, 1927**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 87
- Criminal Procedure Code, 1898 (CrPC) - Section 145

Citation: AIR 1928 Patna 88**Hon'ble Judges:** Allanson, J**Bench:** Division Bench

Judgement

Allanson, J.

This is a reference from the Sessions Judge of Gaya recommending that an order of the Sub-Divisional Officer of Jehanabad u/s 145, Criminal P.C., should be set aside. The Sub-Divisional Officer has decided the case in favour of the first party who are the landlords; the second party are a widow tenant and the alleged ijaradars under her. The first party's case is that the widow surrendered the greater part of the lands to them in 1330, and the rest of the lands were abandoned by her in 1926. They gave the prescribed notice to the Collector u/s 87, Bengal Tenancy Act. The second party ijaradars claim under an ijara deed, dated 30th July 1926, and the widow claims to be in possession of the homestead lands.

2. The learned Sub-Divisional Officer has discussed the oral and documentary evidence and found that the widow admittedly did not cultivate the land in 1926; that admittedly there were crops on the land before the date of the ijara deed which was only to take effect from the katki crops; that crops about a month old were found on the ground by the Sub-Inspector on the 10th August and the first party's labourers were weeding. He has found the evidence of possession of the ijaradars vague, It is not the duty of this Court to

examine the evidence to consider whether it might have come to a different finding. The learned Sessions Judge says that the Magistrate has held that the landlords are entitled to retain possession as having re-entered the land u/s 87, Bengal Tenancy Act. As the law permits them only to enter upon abandoned lands at the end of the agricultural year, if they enter before that date they cannot invoke the aid of Section 87. But as I read the Magistrate's order his reference to Section 87 was an alternative view in reply to a possible argument of the second party. There is a clear finding that there were crops on the ground in July. The proceedings were drawn upon the 13th September. He has found the facts as I have mentioned above, and on those facts he had jurisdiction to declare the possession of the first party.

3. The reference is discharged.