
Babu Triloke Prasad Singh Vs Lala Umanand Lal and Others

None

Court: Patna High Court

Date of Decision: July 21, 1922

Citation: AIR 1922 Patna 447 : 72 Ind. Cas. 634

Hon'ble Judges: Das, J; Coutts, J

Bench: Division Bench

Judgement

Coutts, J.

The plaintiffs in the two suits out of which these appeals arise are tenants in Mauza Dajipur of which the defendants are the

maliks. The land in dispute has been entered in the Survey khatian as ghair mazrua am. The plaintiffs claimed that it appertained to their ancestral

holding consisting of some 34 bighas which are said to be covered by plots Nos. 88 and 89 in an old batwara proceeding and they alleged that the

land has been always in their possession. They, therefore, prayed for a declaration of their title to the disputed land as appertaining to their raiyati

and for recovery of possession. The suit was contested by the defendant No. 2 who alleged that the land was the exclusive land of the maliks

which had been settled with tenants under various pattas and kabuliyats. The suits were dismissed in the Court of first instance, but on appeal the

suits have been decreed. The defendant No. 2 has appealed to this Court.

2. The first point urged in appeal is, that the land having been recorded in the Record of Rights as ghair mazrua am the suits cannot proceed, the

general public not being made parties. This is obviously an unsustainable contention, because the decree will be good as against the parties to the

suit and will not affect the general public.

3. The second point urged is, that the lower Appellate Court has relied to a great extent in coming to its decision on the khasra which was

prepared in the old batwara proceeding and it is contended that this is inadmissible in evidence. There are various authorities that the batwara

khasra is admissible in evidence and I need only refer to a decision of this Court in Ajodhya Prasad Singh Kumar v. Kamal Narain Singh 38 Ind.

Cas. 491 in which it was held that such a batwara khasra was admissible in evidence. This, was a decision of a Judge of this Court sitting alone

whose decision on this finding was upheld in letters Patent Appeal. The batwara khasra is evidence for what it may be worth and in a case such as

the present case where the entry in the khasra is in favour of the tenants it is, in my opinion, very good evidence and evidence on which the Court

was entitled to rely.

4. The last point urged is, that a partition decree (Exhibit E) which was filed on behalf of the defendant has not been considered by the lower

Appellate Court. I find however, from the judgment of the learned Additional Subordinate Judge that he has considered this document and,

although he has not discussed it at length, he has certainly considered it.

5. In the result, I see no reason to interfere with the decision of the lower Appellate Court and I would dismiss these appeals with costs.

6. There will be only one set of costs.

Das, J.

7. I agree.