

Jnanendra Mohan Bhaduri and Another Vs Harendra Krishna De and Others

Court: Calcutta High Court

Date of Decision: Dec. 22, 1924

Citation: AIR 1925 Cal 1169 : 87 Ind. Cas. 32

Hon'ble Judges: Greaves, J; Chakravarti, J

Bench: Full Bench

Judgement

Greaves, J.

This is an appeal by the defendants against a decision of the District Judge of Nadia modifying a decision of the Subordinate

Judge.

2. The suit out of which the appeal arises was for the recovery of possession of certain land from the defendants. The plaintiffs purchased the land

at a sale held under the patni regulations and their case was that when they went to take possession of the land they were resisted by the

defendants and were compelled to bring the suit.

3. The case put forward by the defendants was that they or their predecessors-in-interest had been in possession of the land from before the

Permanent Settlement or at any rate from before the creation of the patni and that they had been recognized as tenants in possession, that their

holding was a ryoti holding of some 312 bighas together with some other lands lying to the east and west of the ryoti of 312 bighas which other

lands they claimed as accretions thereto. A further contention was raised on their behalf that the plaintiffs were purchasers of a part of a patni, but

this contention has no force in view of the finding that the patni was of an 8 annas share. The claim to the lands lying to the east and west of the

alleged ryoti holding of 312 bighas is untenable and cannot be maintained. As to these lands the defendants are clearly trespassers the land is

outside their holding and is not as to any part thereof in the village of Mohisura as they contended, and this claim must fail.

4. The dispute, therefore, narrows itself to a dispute as to that portion of the 312 bighas to which this suit relates.

5. On the facts as found, the tenancy was created in 1298 (1891) after the creation of the patni, and the main question which falls for our decision

is whether the plaintiffs as purchasers at a patni sale under the regulations are entitled to eject the defendants; or whether the defendants are entitled

to remain on the land as tenants under the plaintiffs by virtue of their occupancy. The plaintiffs say that the defendants are not so entitled as they are

not khudkhast ryots or resident and hereditary cultivators who are the only persons protected on a patni sale by virtue of Section 11 of the Patni

Regulations. The plaintiffs further contend that the holding is not ryoti but a tenure and that consequently even if rights of occupancy are protected

the protection does not extend to the defendants who are not occupancy ryots but tenure holders.

6. It is curious that if the plaintiffs' contention as to their right to evict is correct they have not been able to produce a single case in which in similar

circumstances occupancy ryots have been held liable to eviction

7. The policy of the law at the time of the enactment of the patni regulations seem to have been to protect from eviction those cultivating the land; at

the time of the enactment of the patni regulations occupancy rights did not exist, those cultivating the lands were either khudkhast ryots, that is,

ryots of the village cultivating the lands, or paikast ryots who were cultivators who came from outside the village. Consequently Section 11 of the

Patni Regulations extends protection to the only cultivating ryots of the village then known namely khudkhast ryots resident and hereditary

cultivators. Since the enactment of these regulations another class of cultivating ryots has grown up whose occupancy rights after 12 years

possession are recognized and protected by the Bengal Tenancy Act. This clearly shows that it has been the policy of the law throughout to protect

those actually on the land and cultivating it.

8. Moreover, despite the findings of the two lower Courts that) the defendants cannot; rightfully claim to stand in the same position as the former

khudkhast ryots on the land, if in fact they were khudkhast ryots, we do not think that the lower Courts have drawn the right legal inference from

the facts found.

9. The evidence on the record to our mind establishes that the former tenants of the 312 bighas were khudkhast ryots We think therefore that the

defendant, may well claim to occupy (the same position despite the finding that their tenancy dates from 1891. It was we think a tenancy with the

same incidents attaching thereto as formerly attached to the lands in the occupation of the previous tenants that is to say we think upon the facts of

this case the defendants can rightfully claim to be treated as khudkhast ryots with the result that they are protected from eviction by the third

proviso to Section 11 of the Patni Regulations.

10. The claim that this is a tenure and not a ryoti holding is clearly not sustainable upon the findings of the Courts below.

11. The result is that the appellants cannot be evicted from any portion of the 312 bighas which form their occupancy holding, possession of which

they are entitled to retain upon payment of rent for the same to the respondents; but the appellants are not entitled to remain in possession of the

other lands claimed in the suit which are outside the 312 bighas. The decree of the lower Appellate Court will be varied accordingly. The appeal

has succeeded in part and failed in part, so there will be no order as to costs, and this order will apply in both the Courts below.

Chakravarti, J.

12. I agree with my learned brother Mr. Justice Greaves in the judgment just delivered by him and wish only to add a few considerations in

support of his views on the main questions raised in this appeal. Section 11 of the Regulation VIII of 1819 really provides that the purchaser at a

sale for arrears of rent under the regulation should get the patni in the same condition which existed at the time of its creation. All interests created

by the defaulter are intermediate between the interest of the zamindar, who created the patni and the resident cultivators. The third clause of the

section runs as follows: "Provided nevertheless that nothing herein contained shall be construed to entitle the purchaser of a taluk or other Saleable

property intermediate between the zamindar and the actual cultivator to eject a khudkhasht raiyat or resident or hereditary cultivators, etc." This

clause only indicates the limitations to the rights of the purchaser and makes it clear that the purchaser shall have no right to disturb the possession

of a khudkhasht raiyat. The rights of a patnidar are limited to a right to collect the rent from all raiyats the khudkhasht raiyats, who were the only

cultivators who, at the time, when this regulation was enacted, enjoyed such rights: see Section 60, Regulation VIII of 1793, page 24, of Fuld's

Introduction to the Bengal Regulation. The Act X of 1859 called the Rent Act, for the first time created a class of raiyats with rights of occupancy,

and in this class the old khudkhasht raiyats were included; and the distinction between the khudkhasht and paicash raiyats as mentioned in the

regulations was not recognized. This provision of the Rent Act was retained in Act VIII of 1869 and Act VIII of 1885 known as the Bengal

Tenancy Act. It is argued with some plausibility that u/s 11 of the Regulations only the khudkhasht raiyats were protected, but not the raiyats with

rights of occupancy. The right which the raiyat of occupancy enjoys u/s 25 of the Bengal Tenancy Act was not available against a purchaser under

the patni law: on the ground that Section 195 of the Bengal Tenancy Act says that "Nothing in this Act shall affect...Clause (e) any enactment

relating to patni tenures in so far as it relates to those tenures." This argument is unsound. The substantive rights created in favour of the raiyats by

the Bengal Tenancy Act do not in any way affect the provision of the Patni Law. As I have indicated before, the right of a patnidar is primarily to

collect rents from raiyats and that right is in no way affected by Section 25 of the Bengal Tenancy Act. A raiyat called a khudkhast raiyati was

protected from eviction by a purchaser under the regulations, because such raiyats were not liable to eviction at the will of the zamindar. The raiyat

with a right of occupancy now occupies the same position as a khudkhast: raiyat. It seems therefore reasonable to hold that an occupancy raiyat

now should have the same protection as a khudkhast raiyat had when the regulation was passed. An illustration will show the absurdity of the

contention that a purchaser at a patni sale should be entitled to eject an occupancy raiyat, A zamindar cannot now eject an occupancy raiyat

except under the provision of Section 25. Suppose a zamindar grants a patni of the estate and the patni is sold under the regulation then, according

to the argument of the respondent, the purchaser would have a right to eject the occupancy raiyats a right which, as I have shown above, the

zamindar himself does not possess. This leads to a manifest absurdity The patni sales are frequent, but if. does not appear that the purchasers at the

sales held under the regulation have ever successfully established that right. The learned vakils appearing on either side were unable to produce any

direct authority on the point. This shows that such an extravagant claim was never put forward before.