Supreme Court of India
Sri 5 Sita Maharani And Ors. vs Chhedi Mahto And Ors. on 3 February, 1955
Equivalent citations: AIR 1955 SC 328
Author: J Imam
Bench: S Das, Bhagwati, J Imam
JUDGMENT Jafer Imam, J.

1. This is an appeal against the decree of the Patna High Court setting aside the decree passed by the Addl. District Judge of Motihari in favour of Raja Mohan Bikram Shah the proprietor of the Ramnager Raj. After his death the appellants were substituted in his place and stead and they filed an application in the High Court for a certificate for leave to appeal to this Court which was granted.

2. On 19-3-1910, the Raja executed a registered Sadaua Pataua deed in favour of Messrs. H. Murrey and G. Murrey, hereinafter referred to as the Naraipur Concern, with respect to 17 villages including village Ratni for a period of 31 years. The land in suit appertains to Khata No. 2 of village Ratni, consisting of plot Nos. 2, 87 and 89.

3 The Raja instituted the suit out of which this appeal arises for a declaration that the land in suit was his Bakasht and the respondents were unlawfully in possession of it. He prayed for recovery Of possession, mesne profits and interest 'pendente lite' as well as future interest.

4. The respondents resisted the suit on the ground that the land in suit had been permanently settled with them by the Naraipur Concern as 'Raiyats' under a 'Patta Hunda' (Ex. A) described in this case as a 'hukumnama' dated 5-3-1918, that they were settled Raiyats of village Ratni and had been in possession of the land for more than 20 years and that they had acquired occupancy rights in the land in suit. They had also pleaded adverse possession but this plea was abandoned at the trial.

5. The Additional District Judge of Motihari decreed the suit, leaving the determination of the amount of mesne profits to be decided in a subsequent proceeding. Against this decision the respondents appealed to the High Court which reversed the decision of the trial Court and dismissed the suit.

6. On the question of possession the trial court disbelieved the respondents' case that they had been in possession for over 20 years but it was of the opinion that near about the time that the 'Sadaua-Pataua' mortgage was about to expire, the respondents were, in fact, in possession. The High Court confirmed these findings.

7. The trial court was of the opinion that the 'Hukumnama', Ex. A, and the receipts filed by the respondents showing payment of 'hunda' rent were not genuine. It held that the respondents were not inducted upon the land in suit by the Naraipur Concern and they had not acquired any right of occupancy by virtue of the alleged settlement. The High Court was of the opinion that there was no reason to interfere with the findings of the trial Court that the 'Hukumnama' and the receipts were not genuine.

8. It would appear from the Khatian of village Ratni that the respondents are settled 'Raiyats' of that village. The trial court, however, thought that in order that the respondents may acquire a right of occupancy in the land in suit, it was necessary under Section 21, Bihar Tenancy Act that they must hold the land as 'Raiyats'. The story of the settlement having failed, there was nothing to show that the possession of the respondents of the land in suit was in the capacity of 'Raiyats'. It accordingly held that the respondents had not acquired any right of occupancy.

The High Court was of the opinion that the trial Court had erred in holding that there was nothing to show that the possession of the respondents over the disputed land was in the capacity of Raiyats even though the case of settlement had failed. It relied upon an alleged acknowledgment in the written statement (Ex. D) filed by. the Naraipur Concern in a commutation proceeding under Section 40, Bihar Tenancy Act instituted at the instance of the respondents. It rejected the contention that this document was inadmissible.

It was of the opinion that as the application of the respondents for commutation of rent was not resisted on the ground that they were not holding as 'Raiyats', it was clear that their possession as 'Raiyats' was acknowledged by both the Naraipur Concern and the Ramnager Raj. It accordingly came to the conclusion that the respondents had proved their possession over the land in suit as 'Raiyats' and they being settled 'Raiyats' of the village, had acquired the right of occupancy.

9. It is clear from the findings of the High Court that but for Ex. D, the decision of the trial court would have been affirmed because it agreed with the latter both on the question of possession and the genuineness of the 'Hukumnama' and the receipts. The real question for determination, therefore, is as to whether the statement in Ex. D is an acknowledgment that the respondents held the land in suit as 'Raiyats', whether it was binding on the Ramnager Raj and whether it could create) a 'Raiyati' interest when the creation of such an interest under the 'Hukumnama' has been rejected by the concurrent findings of the courts below.

10. Two Rent Commutation cases were filed on 7-9-1940, one by the respondent Mangni Mahto and others, and the other by the respondent Chedi Mahto. The former case was numbered 9 of 1940-41 and the latter No. 10 of 1940-41. Exhibit D is the written statement filed by Naraipur Concern in case No. 9. In this document there is no specific statement to the effect that the respondents are holding the land as 'Raiyats'. There is, however, a statement to the effect that Mangni Mahto is in possession from the year 1343 Fasli of two bighas on cash Hunda rent of Rs. 46/8/- annually; Tejman Mahto in possession of 3 bighas on hunda rent at the rate of 18 maunds per bigha annually and Chedi Mahto in possession of 81/4 bighas at the rate of 28 maunds per bigha.

It appears from the order sheet Ex. C(3) in case No. 9 that the Ramnager Raj filed an objection on 10-3-1941, which has not been produced in the present suit. The Sub-Divisional Magistrate, who was dealing with the commutation cases directed that Case No. 9 should be put up along with case No. 10 on 3-4-1941, on which date he recorded "vide order in case No. 10 of 1941." The order sheet Ex. C in the latter case reads "An objection to the commutation petition is filed on behalf of the Naraipur Concern. But it is admitted that the tenant holds the land as 'Batai' and as such the case will proceed."

It was urged by the respondents that these observations had no reference to the land covered by case No. 9. They referred to land covered by case No. 10 which was not the land in suit. It was only the operative part of the order that the case will proceed which governed case No. 9. If the order in case No. 10 covers case No. 9, it seems that the Naraipur Concern were also contending in the latter case that the applicants were 'bataidars'. The objection filed by the Naraipur Concern in case No. 10 has not been produced in this suit. If it had been, the position might have been more clear. The High Court do not appear to have considered Ex. C all hough they refer to Ex. C(3).

The final order in the commutation proceedings as to whether the applications were allowed or rejected has not been filed. Assuming that the Ex. D amounts to an admission by the Naraipur Concern that the respondents were holding the land as 'Raiyats', it is clear from Ex. C(3) that an objection had been filed on behalf of the Ramnager Raj which has not been produced by the respondents. An inference may well be drawn that if they had produced it, it would have shown no such admission on the part of the Ramnager Raj. Both the Naraipur Concern and the Ramnager Raj were parties to the commutation proceedings.

Unless it was clearly established that the Ramnager Raj made such an admission, it could not be said, as held by the High Court, that there was "no room for doubt that the possession of the defendants of the land in suit as 'Raiyats' was acknowledged by both the mortgagees and the mortgagor". It may well have been that the Ramnager Raj was objecting to the maintainability of the applications under Section 40, Bihar Tenancy Act on the ground that the applicants were not occupancy 'Raiyats'.

11. The conduct of the Ramnager Raj shortly after the expiry of the period covered by the 'Sadaua Pataua' deed establishes that the right of the respondents to possess the land in suit was seriously disputed. Attempts were made by the Ramnager Raj to exercise acts of possession which the respondent resisted. As the dispute was likely to result in a breach of the peace, proceedings under Section 144, Criminal P. C. were drawn up by a Magistrate.

It would appear from the order of the Magistrate Ex. C(l) dated 3-1-1944, that the lawyer for the Ramnager Raj admitted that the lands in village Ratan Purwah were in possession of some persons on Hunda rent, but so far as plot Nos. 2, 87 and 89 in village Ratni were concerned, it was disputed that there had been any settlement of these plots by the Naraipur Concern in the name of Mangni Mahto and Tejman Mahto. It seems improbable, therefore, that the Ramnager Raj would have made any admission of the kind to be found in Ex. D, having resisted throughout the claim of the respondents.

Exhibit D was filed by the Naraipur Concern on 10-3-1941, about ten days before the expiry of the period under the 'Sadaua Pataua' deed. The Naraipur Concern could not have had at that time any serious interest in the land in suit, whereas Ramnager Raj stood to lose Bakasht lands which was a matter of grave concern to a landlord. Any admission made by the Naraipur Concern that the respondents held the land as Raiyats cannot be regarded as an act done in due course of management of the estate having a binding effect on the Ramnager Raj.

The Ramnager Raj had filed an objection in Case No. 9 which related to the land in suit and were resisting the right of the respondents to claim commutation of rent independently and there is nothing to indicate that the stand taken up by the Naraipur Concern as stated in Ex. D was accepted. In these circumstances the material contained in Ex. D affords insufficient evidence to lead to the conclusion, that a 'Raiyati' interest had been created in the land in suit.

12. Although the High Court held on the basis of Ex. D that the respondents were in possession of the land in suit as 'Raiyats', it is to be observed that in their written statement the respondents did not plead that a 'Raiyati' interest had been created in the land because either the Ramnager Raj or the Naraipur Concern or both had acknowledged that the land held by them was as 'Raiyats'. All that was pleaded in para. 9 of the written statement was that the Ramnager Raj and the Naraipur Concern had admitted in the commutation proceedings possession of the respondents as well as the settlement with them. The case of settlement has been rejected by the courts below and a mere admission of possession would not lead to the result that the respondents held the land as 'Raiyats'. The respondents although settled 'Raiyats' of village Ratni did not, therefore, acquire occupancy rights in the land in suit by virtue of the provisions of Section 21, Bihar Tenancy Act.

13. Since it was the case of the respondents that the settlement of the Raiyati interest with them had been reduced to writing, the 'Hukumnama' required registration. Since it was not registered, it is inadmissible and no evidence could be given as to its terms and the contents of Ex. D could not be used for that purpose, particularly as the 'Hukumnama' and the receipts in support of it have been found not to be genuine. There is nothing on record to show that the alleged admission contained in Ex. D was founded on any settlement other than this 'Hukumnama'.

14. There was a controversy between the appellants and the respondents as to whether the Naraipur Concern on the terms of the 'Sadaua Pataua' deed had the power to make a settlement of 'Raiyati' interest. It is unnecessary to determine this question as the concurrent finding of fact of the courts below is that the 'Hukumnama' under which the settlement is alleged to, have been made and the receipts in support of it are not genuine, that is to say the case of the respondents that there had been a settlement had not been proved.

15. In our opinion the High Court erred, in the circumstances of the case, in setting aside the decree of the Additional District Judge of Motihari. The appeal is accordingly allowed with costs throughout. The decree oil the High Court is set aside and that of the! Additional District Judge is restored.