

Privy Council Appeal No. 99 of 1910.
Bengal Appeal No. 13 of 1908.

Arthur Henry Forbes - - - - *Appellant.*

v.

Maharaj Bahadur Singh and others - - *Respondents.*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 4TH MARCH 1914.

Present at the Hearing :

LORD SHAW.

LORD MOULTON.

MR. AMEER ALI.

[*Delivered by Mr. AMEER ALI.*]

This Appeal, which is from a Judgment and Decree of the High Court of Calcutta, dated the 8th of April 1908, raises certain questions of particular importance under the Rent Law of Bengal, for the proper apprehension of which it is necessary to set out in some detail the facts of the case.

The zamindari of Lot Saifganj, situated in the district of Purneah, was owned at one time by a rich zamindar of the name of Roy Dhanpat Singh, since deceased. The estate, however, was settled in Patni, and has been held for some years past by the Defendant Chatrapat Singh as the Patni Talookdar; Chatrapat, on his side, has settled the Patni tenure in several parcels with subordinate tenure-holders called Dar-patnidars.

[12.] J. 299. 125.—3/1914. E. & S.

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Two of these Dar-patnis are held by the Plaintiff-Appellant. These tenures are special to Bengal, the Sonthal Pergunas and certain parts of Chota-Nagpur, and their incidents are governed by Regulation VIII. of 1819, commonly called the Patni Regulation. To some of these incidents reference will be made in the course of this Judgment.

But it may be conveniently premised here that a Patni Talook is a permanent, heritable and transferable tenure, which the zamindar may create over the whole or part of his estate, whilst the Patni Talookdar has a similar right to let the entire property held by him in Patni or in parcels to subordinate Talookdars called Dar-patnidars. And this process of sub-infeudation may, so far as the law is concerned, be carried down to several lower degrees. In the case of these tenures the zamindar has a right to apply to the Collector to put up the Patni Talook to sale for arrears of rent, and the sale has the effect of cancelling all under-tenures; but the subordinate tenure-holders have the right to deposit in the Collector's Court the arrears of rent, and to be put in possession of the defaulting superior tenure for the satisfaction of the deposit made by them. The same right which the zamindar possesses for the realisation of his rent, with the correlative right on the part of the subordinate tenure-holders of saving the superior tenure from sale, is given to them in succession.

On the 27th of June 1893 Dhanpat Singh transferred the zamindari, subject of course to Chatrapat's Patni, to a Hindu lady, Bhagwanbati Chowdhraïn, who has unquestionably been in possession of the estate since her purchase.

It appears that certain arrears of rent in respect of the Patni had become due before the sale to Bhagwanbati Chowdhraïn. For these arrears Dhanpat Singh brought a suit in the Civil Court on the 21st September 1893. The

final Decree in this action was passed by the High Court on the 10th of July 1896. Nine days after, Dhanpat Singh executed a Deed of Trust by which he assigned to the Defendants 2 to 4 in trust for the Defendant Maharaj among other properties the Decree for arrears of rent.

Dhanpat Singh died shortly after, leaving Maharaj his only son and heir.

In 1897 the Trustees proceeded to execute the Decree against Chatrapat but were met with various objections on his part which were finally overruled by the High Court in 1899.

In the meantime Chatrapat had fallen into arrears in respect of the Patni rent payable to the Chowdhraim; and that lady had instituted in the Court of the Collector of Purneah the special proceedings under Regulation VIII. of 1819 for the realisation of her dues. The defaulting tenure was accordingly advertised for sale on the 14th of May 1901. The Plaintiff-Appellant thereupon deposited the amount of the arrears in the Collector's Court and was put by him in possession of the Patni Talook. Since then he has been and still is in possession of the superior tenure paying rent to the zamindar and realising the rents due to the Patni Talookdar from the subordinate holders.

The Trustee Defendants, having obtained the decision of the High Court that they were entitled to execute Dhanpat Singh's decree, applied for the sale of the Patni Talook under Section 163 of the Bengal Tenancy Act. It is to be observed that a sale held under this section does not give power to the decree-holder to annul "notified and registered incumbrances." The Plaintiff thereupon preferred a claim under Section 278 of the Civil Procedure Code of 1882, which, however, after some protracted proceedings, was withdrawn. Apparently a sale under Section 163 was held, but it did not fetch a sum sufficient to

liquidate the arrears and costs, and the Defendants then applied for a sale under Section 165 under which the decree-holder has the power to annul all incumbrances including under-tenures. On this application the 6th of August 1906 was fixed for the sale of the Patni. The present suit was then brought by the Plaintiff on the 9th of July in the Court of the Subordinate Judge of Purneah to restrain the Defendants from proceeding with the sale.

It should be noted here that there exist many permanent, heritable, and transferable tenures in Bengal which do not come within the purview of Regulation VIII. of 1819, and which have no relation to Patni Talooks. The incidents of these tenures are governed by the Bengal Tenancy Act passed in 1885, to regulate, subject to certain exceptions to which attention will be drawn, the relations in general between landlord and tenant.

The Bengal Tenancy Act of 1885, whilst it protected the permanent tenure-holder and other tenants having similar permanent interests against ejection for arrears of rent, gave to the landlords certain rights which they either did not possess before or possessed only in a qualified form. One was the right to bring to sale the tenure or holding in execution of a decree for arrears of rent. Section 65, which declares this liability of the defaulting tenure, also declares that "the rent shall be a first charge thereon." It is round these words that the controversy between the parties is mainly centred. Their Lordships say mainly, because there is another question of vital importance in this case which relates to the applicability of the provisions of the Bengal Tenancy Act to Patni tenures.

The Defendants in their endeavours to bring Chatrapat's Patni Talook under the provisions of

Section 165 of the Tenancy Act contend that as the relationship of landlord and tenant existed between Dhanpat Singh and Chatrapat when the rents became due, the decree obtained by him became by virtue of Section 65 a first charge on the tenure. The Plaintiff's contention, on the other hand, is that as Dhanpat Singh had parted with his interest in the zamindari before the institution of his suit for arrears, the Decree of which execution was sought was not a Rent Decree within the meaning of Section 65.

The Subordinate Judge has upheld the Plaintiff's contention, and granted him an injunction restraining Maharaj Bahadur and the Trustee Defendants, who are called in the suit "first party Defendants," from executing their Decree of the 10th of July 1896 against the Patni under the provisions of the Bengal Tenancy Act. His decision has been reversed by the High Court on appeal and the Plaintiff's suit been dismissed with costs. The learned Judges considered that the decree being for rent the mere fact that the zamindar had sold the estate after it became due does not affect his right to "a first charge." At least that is what their Lordships understand to be the meaning of the learned Judges in the following passage of their judgment:—

"The Decree of the 10th July 1896 is a decree for rent. Rai Dhanpat Singh was the landlord at the time when the rent he sued for accrued due. His claim for rent when found due, became a 'first charge' on the patni. There is nothing in the law which disentitles him to a first charge, because after the accrual of the rents he sued for, he parted with his interest in the zamindari."

This conception is further developed at a later stage of their Judgment, where they say as follows:—

"Now, no doubt, the decision of this Full Bench does not deal with a case such as the present in which the landlord had parted with his interest before he instituted

“ his suit for rent, but it would seem to follow that if he can
 “ execute a decree for arrears of rent as a rent decree after
 “ he has parted with his interest as landlord, he can also do
 “ so when he obtained his decree for rent, even after he had
 “ parted with his interest in the property. The character
 “ of the decree a suitor obtains, depends on the nature of the
 “ claim and of his right to the relief sought for, and is not
 “ altered by any change in his position which may have
 “ taken place subsequent to the accrual of his right to sue.”

Their Lordships cannot help observing that the learned Judges have fallen into an error in drawing an inference of law in support of their conclusion from a decision which was obviously based on facts different from those with which they had to deal. In the Full Bench case of *Khatra Pal Singh v. Krilarthamoyi Dassi* (I. L. R., 33 Cal. 566), the landlord did not part with the property and put an end to the relationship of landlord and tenant until after the Decree in his suit for rent; whereas in the present case he transferred his interest to Bhagwanbati Chowdhrain before his suit for the arrears. The broad question, however, for determination in this Appeal is whether the special right created in favour of the landlord under Section 65 can be claimed also by one who has parted with the property which gives this right and to which it is attached.

There is no doubt that there is a divergence of opinion among the Judges of the High Court of Calcutta with regard to the construction of Section 65. The section itself runs as follows :--

“ Where a tenant is a permanent tenure-holder, a raiyat
 “ holding at fixed rates or an occupancy-raiyat, he shall
 “ not be liable to ejection for arrears of rent, but his
 “ tenure or holding shall be liable to sale in execution of a
 “ decree for the rent thereof, and the rent shall be a first
 “ charge thereon.”

It is not a happily worded section, and the words “ and the rent shall be a first charge
 “ thereon,” seem, from their collocation, to

have been inserted as an afterthought without sufficient consideration of their applicability to the rest of the provisions contained in the section. They give no indication as to when it becomes a "first charge." Does it become a first charge from the nature of the claim, as some of the learned Judges seem to imagine, or does it become a first charge after it has been ascertained and made the subject of a decree? Again, the section does not sufficiently indicate at whose instance the tenure or holding shall be liable to sale in execution of a decree for rent thereof, though from the reason of the thing it is obvious that it must be at the instance of the landlord.

These questions cannot, therefore, be answered by a reference to the mere section itself; to understand its meaning, their Lordships apprehend, the general scope of the Statute as well as of the chapter in which it occurs, must be taken into consideration. The Act, as stated in the preamble, was designed "to amend and consolidate certain enactments relating to the Law of Landlord and Tenant." The words "tenant," "landlord," and "rent," are carefully defined. "Landlord" is declared to mean "a person immediately under whom a tenant holds, and includes the Government," whilst "rent" is declared to mean "whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant." Chapter VIII. embodies the "general provisions as to rent." After dealing with "rules and presumptions as to amount of rent," "the alteration of rent," "the payment of rent," "receipts and accounts," "deposit of rent" in Court when the landlord refuses to receive payment, it treats of "arrears of rent." The governing idea throughout the multifarious

provisions contained in Chapter VIII. to regulate the respective rights and obligations of landlords and tenants, is the subsistence of the relationship that gives rise to those rights and obligations.

Section 65 declares that a certain class of tenants shall not be liable to ejection for "arrears of rent," but that their tenure or holding "shall be liable to sale in execution of a decree for the rent thereof." Section 66 provides that in the case of other tenants not coming within the purview of Section 65, the landlord "may institute a suit to eject" the defaulting tenant. The two sections taken together cover practically the remedies provided by law for the landlord to recover arrears of rent. One section is the exact corollary of the other. The right to proceed to sale in one case, in the other to eject, is dependant on the existence of the relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced. A reference to Section 148, Clause *h*, clearly shows that the right to apply for the execution of a decree for arrears was attached to the status of the decree-holder *qua* landlord. It declares that "notwithstanding anything contained in Section 232 of the Civil Procedure Code an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest has become and is vested in him."

The prohibition contained in this section refers to decrees obtained by the landlord under Section 65. To acquire the right which the section gives, not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure must have the landlord's interests "vested"

in him. In other words, the right to bring the tenure or holding, as the case may be, to sale exists so long as the relationship of landlord and tenant exists.

It seems to their Lordships clear on an examination of the different sections bearing on the subject that the right to bring the tenure or holding to sale under Section 65 appertains exclusively to the landlord ; and that a person to whom certain rents are due, and who obtains a decree therefor after he has parted with the property in which the tenancy is situate, has no such right. The contrary view, their Lordships think, would give rise to a very anomalous situation. A zamindar to whom certain arrears are due, as in the present case, may sell his property, without assigning, for purposes of his own, the back-rents as he is entitled to do ; he may then sue for those back-rents ; before any decree is made in this suit, the tenant falls into arrears to the new landlord who brings a similar suit. Both the ex-landlord and the present landlord obtain decrees for their respective arrears. In whose decree and on whose application is the tenure to be sold ? The question admits of only one answer—that it is the existing landlord alone who can execute the decree ; the ex-landlord is an outsider, and whilst he can execute his decree against the debtor as a money-decree, he has no remedy against the tenure itself.

The learned Judges of the High Court seem to think that either from the nature of the debt being arrears of rent, or the decree being for arrears of rent, the tenure becomes *ipso facto* hypothecated so to speak for the debt ; and that consequently the person to whom the debt is due, although he has ceased to be the landlord, and is to all intents and purposes so far as other rights and obligations under the law are concerned, a total stranger to the property with which those

rights and obligations are inseparably connected, he has the special remedy given to the landlord to recover arrears attached to the tenure. This conception of the legal position seems to their Lordships untenable, for the charge created by Section 65 is clearly in favour of the landlord.

There is another equally fatal objection to the application of the contesting Defendants to bring to sale the Patni tenure in execution of Dhanpat Singh's decree.

The Patni Regulation is a self-contained Statute. It lays down certain well-defined rules for the realisation by the zamindar of arrears of rent from a tenure holder; it makes the tenure primarily liable, and it gives to the zamindar the right of applying to the Collector for the periodical sale of defaulting talooks.

Section 8 provides for the manner in which the zamindar, that is "the proprietor under direct engagement to Government," shall be entitled to apply for the sale of these tenures.

Section 11 declares that—

"any taluq or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives, or assignees."

It is unnecessary to refer to the rest of this section for the purposes of this Judgment.

Section 13 provides the method by which the "holder of a talook of the second degree" may save his tenure "from the ruin that must attend" the sale of the superior tenure.

Sub-section 2 declares—

"Whenever the tenure of a taluqdar of the first degree may be advertised for sale in the manner required by the second and third clauses of Section 8 of this Regulation, for arrears of rent due to the zamindar, the taluqdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending

“ on the part of the zamindar on the day appointed for
 “ sale ; in like manner they shall be entitled to lodge money
 “ antecedently, for the purpose of eventually answering any
 “ demand that may remain due on the day fixed for the
 “ sale, and, should the amount lodged be sufficient, the sale
 “ shall not proceed, but, after making good to the zamindar
 “ the amount of his demand, any excess shall be paid back
 “ to the person or persons who may have lodged it.”

And Sub-section 4 after referring to certain conditions which it is unnecessary to consider here, declares that “ such deposit shall not be
 “ carried to credit in, or set against, future
 “ demands for rent, but shall be considered as a
 “ loan made to the proprietor of the tenure pre-
 “ served from sale by such means, and the taluq
 “ so preserved shall be the security to the person
 “ or persons making the advance, who shall be
 “ considered to have a lien thereupon, in the
 “ same manner as if the loan had been made upon
 “ mortgage ; and he or they shall be entitled, on
 “ applying for the same, to obtain immediate
 “ possession of the tenure of the defaulter, in
 “ order to recover the amount so advanced from
 “ any profits belonging thereto.”

It will be seen, therefore, that the Appellant in this case, by his admitted deposit of the arrears for which the superior tenure was advertised for sale at the instance of the Chowdhraim zamindar, acquired the special lien expressly created by the Regulation which may well be called a statutory salvage lien arising not from any implication of the law but under the express directions and declarations of the Act.

Regulation VIII. of 1819 being thus, as already observed, a self-contained Act embodying the rules relative to the rights of zamindars and Patni talukdars, the Legislature in enacting Act VIII. of 1885 excluded in express terms from the operation of the Tenancy Act the special legislation relating to Patni tenures. Section 195 of Act VIII. of 1885 declares

(omitting the immaterial portions) that "nothing in this Act shall affect . . . any enactment relating to Patni tenures, so far as it relates to those tenures."

The Plaintiff's right to hold the Patni talook exempt from any proceeding under the Tenancy Act, is founded on steps taken by him under the Patni Regulation.

For these considerations their Lordships are of opinion that the Judgment and Decree of the High Court should be set aside, and the Decree of the Subordinate Judge restored. The first party Defendants, the contesting Respondents, must pay the costs of this Appeal and of the Appeal to the High Court.

And their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

ARTHUR HENRY FORBES

v.

MAHARAJ BAHADUR SINGH AND
OTHERS.

DELIVERED BY MR. AMEER ALL.

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