

MANU/BH/0110/1943

Equivalent Citation: AIR1944Pat87

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

Decided On: 06.12.1943

Appellants: **Maheshwari Prasad Varma**  
**Vs.**  
Respondent: **Dulhin Manrajo Kuer**

**Hon'ble Judges/Coram:**

*Saiyid Fazl Ali, C.J., Manohar Lall and Chatterji, JJ.*

**JUDGMENT**

**Saiyid Fazl Ali, C.J.**

**1.** This is a second appeal from the judgment and decree of the District Judge of Gaya affirming the judgment and decree of a Subordinate Judge in a suit for rent which was instituted by the plaintiff-respondent against the appellant under the following circumstances: The plaintiff holds 16 annas mukarrari tenure of village Sohaipur having purchased it by a sale deed dated 12th May 1930. Prior to her purchase there was a dispute regarding the possession of the property between her vendor and certain other persons and the property was attached under Section 146, Criminal P.C., and placed under the management of a receiver in 1927. After her purchase she brought a suit in 1932, to establish her title but in the mean times the receiver had given to the defendant a lease of the village for the purpose of collecting rent for a term of seven years commencing from the year 1340 fasli at an annual rental of Rs. 1618. Subsequently, the plaintiff succeeded in her suit and her title to the property was declared. The defendant, however, remained in possession of the property as a lessee till 18th December 1934, when the plaintiff got possession. On 12th September 1938, the plaintiff brought the present suit for recovery of arrears of rent for three kists of the year 1340, the whole of the year 1341 and two kists of the year 1342, the total claim being for Rs. 2423-12-0.

**2.** Both the Courts below have decreed the suit holding that it is governed by the six years rule of limitation prescribed in Article 116, Limitation Act, and the only point raised in g, second appeal is that the suit is governed not by Article 116, Limitation Act, but by Article 2 of Schedule 3, Bihar Tenancy Act, and the period of limitation is therefore not six years but three years. The appeal was originally heard by a Division Bench consisting of Rowland and Chatterji JJ. but they have referred it to a Full Bench and formulated the following, questions of law upon which in their opinion the decision of the Full Bench is necessary:

(1) Whether a thica lease of a village, for the purpose of collecting rents, creates a tenancy within the purview of the Bihar Tenancy Act as being a lease of agricultural land or is excluded from the scope of the Act as being not a lease for agricultural purposes, (2) Whether a suit for arrears of rent due on such a lease is governed by Article 2 of Schedule 3, Bihar Tenancy Act. (3) When the lease was granted by a receiver appointed by the Court under Section 146, Criminal P.C., whether the position of the lessee, so long

as he remains in possession, is different from that of a lessee from the true owner; and if so, what is the result.

**3.** Mr. Mahabir Prasad, who appears for the appellant contends that by virtue of the thika. lease the position of the defendant was that of a tenure-holder and therefore the suit is governed by the rule of limitation laid down in Schedule 3, Bihar Tenancy Act; and in support of his contention he relies upon Sri Ram Chandra Naik v. Ajodhya Singh A.I.R. 1935 Pat. 508. Hiralal Singh v. Rinkauri Singh MANU/BH/0175/1933 and Mahmood Hasan Khan v. Muhammad Akhtar Hossain Khan A.I.R. 1942 Pat. 474. In Sri Ram Chandra Naik v. Ajodhya Singh A.I.R. 1935 Pat. 508 it was held that the right to hold land for the purpose of collecting agricultural rents, whether or not it constitutes a tenancy for agricultural purposes within the meaning of Section 117, T.P. Act, does constitute a tenure within the Bengal Tenancy Act and the fact that the lease covered an entire mouza and required the lessees "by their good treatment and by making settlement to cultivate the party and dili lands and further gave them the right to plant trees" was sufficient to bring the lease within the Bengal Tenancy Act and therefore it was excluded from Ch. 5, T.P. Act, 1882. In Hiralal Singh v. Rinkauri Singh A.I.R. 1934 Pat. 75 it was held that the thika lease ordinarily came within the purview of the Bengal Tenancy Act and Section 68 of the Act empowered the Court to award damages in a suit for rent brought by the lessor against the lessee. In Mahmood Hasan Khan v. Muhammad Akhtar Hossain Khan A.I.R. 1942 Pat. 474 the Court had to deal with a case where the right to collect rent in regard to certain agricultural lands was given for a fixed, term and the kabuliyat further provided that the lessee was authorized to cultivate the bakasht lands and appropriate its produce to himself. The lessee who entered into possession of the land did not pay rent and held over and the lessor thereupon instituted a suit for: thika rent for 1339 to 1344 Fasli, the period of holding over being included. On these facts Rowland J., held that though in fact the lease was a lease contemplating agricultural operation by the lessee himself the predominant object of the lease was the collection of the rent and that it was a tenure and the defendant lessee during the currency of the "lease was a tenure-holder within the meaning of the Bengal Tenancy Act. Rowland further held that Article 2 of Schedule 3, Bihar Tenancy Act, applied and the claim for rent for three years was barred by time. Chatterji J., agreed with this view and in doing so pointed out that the Subordinate Judge had in appeal found that the lease under which the defendant had taken possession of the property was an agricultural lease and in view of the fact that there was a clear provision therein that the lessee would be entitled to cultivate the land it was difficult to hold that the finding of the Subordinate Judge was wrong.

**4.** If these had been the only decisions on the point this appeal would probably have never been referred to a Full Bench but in Jwala Prasad v. Harihar Prasad A.I.R. 1941 Pat. 106 a contrary view seems to have been indicated by Harries G.J., and Manohar Lall J. That decision cannot be ignored because it was pronounced in a rent suit similar to the one before us--a suit brought on the basis of an exactly similar thika lease executed by the very receiver with whom we are concerned in this case in respect of certain other villages which had also been attached under Section 146, Criminal P.C. In that case a question arose whether in the absence of a provision in the lease for the payment of interest on arrears of rent the plaintiff was entitled to claim interest under Section 68, Bihar Tenancy Act. Their Lordships rejected the claim, Manohar Lall J., with whom Harries C.J. agreed, observing as follows:

The lease already referred to is not an agricultural lease within the meaning of the Bengal Tenancy Act. The lease is for collection of rent and therefore

the provision of the Bengal Tenancy Act for awarding interest cannot apply.

**5.** The view put forward in this case receives some support from the decision of the Privy Council in *Raja Satya Niranjan Chakravarti v. Sarajubala Devi* MANU/PR/0004/1929 in which their Lordships of the Privy Council affirmed the judgment of the Calcutta High Court which contained the following statements:

This was the creation of a tenancy for the purpose of realisation of rent from the cultivating tenants and, therefore, the provisions of the Transfer of Property Act apply to it.

**6.** Another case which strongly bears on the point is *Alauddin Ahmad v. Tamijuddin Ahmad* MANU/WB/0113/1937 : AIR1937Cal587 wherein Biswas J. has laid down that the true test to determine whether a lease for collection of rent does or does not come within the Bengal Tenancy Act is not whether the lands comprised in it are or are not agricultural lands but whether or not the letting was for agricultural purposes. This last decision has been strongly relied upon by the learned advocate for the respondent on the ground that it is in accord with the view which was affirmed by the Privy Council in *Raja Satya Niranjan Chakravarti v. Sarajubala Devi* MANU/PR/0004/1929.

**7.** Now the first question to be decided is which of the two conflicting views is correct and it is evident that the question is not at all free from difficulty. The view which has been taken in this Court depends upon the definition of the expression 'tenure-holder' as given in the Bengal Tenancy Act and at the first sight is strongly supported by it. The definition runs thus:

Tenure-holder means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors-in-interest of person who have acquired such right.

It has been contended before us that the holder of a thika lease, like the one with which we have to deal in the present case, fully comes within the definition of a tenure-holder, and therefore, a suit to recover rent on the basis of such a lease must be a suit under the Bengal Tenancy Act; but it seems to me that the definition of "tenure-holder" must be read along with the definition of "tenant" as given in the Bengal Tenancy Act because the tenure-holder is a class of tenant. A "tenant" is defined as a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person. Rent is defined as meaning 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. To be a tenant, therefore, a person must hold land under another person and must ordinarily pay rent for the use and occupation of such land.

**8.** Now, when an absentee landlord or a landlord who does not want to collect rent himself executes a thika lease to another person for the purpose of collecting rent, no tenure is created thereby, because the lease does not contemplate holding of any land by the lessee. The lands are already held directly under the landlord by the tenants from whom the rent is to be collected as evident from the fact that to him alone the lands are to revert in the event of there being a surrender or abandonment. The lessee is merely a farmer of rent and is so described in Section 22(2), Ben. Ten. Act, and what is leased to him is not land but the proprietary rights of the lessor to a

limited extent. A farmer of rent is primarily concerned only with the middle man's profits and he need not be himself an agriculturist and may even be wholly unfamiliar with agricultural operations. A farming lease, therefore, is evidently not a lease for agricultural purpose and the lessee cannot be a tenure-holder under the Bengal Tenancy Act which was enacted only for agriculturists and those concerned in agricultural operations. This view is supported to some extent by the decision in *Ballabh Das v. Murat Narain* MANU/UP/0058/1926 : AIR1926All432 which lays down that where the entire village is leased to the lessee who is put in possession thereof and is authorised to let out lands to tenants and make collections such a lease was not a lease for agricultural purposes so as to be exempted from the operation of Section 108, T.P. Act. Mukherjee J. who was one of the Judges constituting the Bench which decided the case dealing with the point observed as follows:

The lease read as a whole shows that the zamindar put the lessee in the same position as he himself occupied except in a few minor matters in consideration of a small sum of money to be paid to him year after year. The primary object of the lease was to obtain the proprietary rights of the lessee and not to utilise any land for purpose of agriculture. Of course, it would be open to the lessee to cultivate any particular land if he so desired, but that is a secondary object and not the primary object. Where the primary object of the lease is not agriculture the lease must be treated as not an agricultural lease.

Strictly speaking, it will not be correct to say that even though the lease be not an agricultural one, yet it may be governed by the Bengal Tenancy Act, if the lessee is a tenure-holder in the sense in which the term is defined in the Bengal Tenancy Act. A person is not a tenure-holder under the Bengal Tenancy Act unless he is a tenant as defined in the Act and he is not a tenant unless he holds land for agricultural purpose. The learned Judges who referred this case were, therefore, right in formulating their question as follows:

Whether a thica lease of a village for the purpose of collecting rents, creates a tenancy within the purview of the Bihar Tenancy Act as being a lease of agricultural land.

**9.** The question, as I have said, is a difficult one, and the definition of a tenure-holder appears to be at the first sight sufficiently wide to cover a lease like the present, but we have to look to the substance of the transaction. At any rate whatever view one might have otherwise been inclined to take of the question, it seems to me that in view of the decision of the Privy Council in *Raja Satya Niranjan Chakravarti v. Sarajubala Devi* MANU/PR/0004/1929 it is difficult to hold that a lease like the present is an agricultural lease and is governed by the Bihar Tenancy Act. I would, therefore, answer the first part of the first question in the negative and hold that the lease in question is excluded from the scope of the Bihar Tenancy Act and it is not a lease for agricultural purposes.

**10.** It is to be borne in mind that in the present case we have to deal with a lease which is purely a lease for the purpose of collecting rent. It is not the case of the lessee that apart from collecting rent he was also entitled to cultivate any lands under the lease. The question which is formulated for the decision of the Full Bench is also based on the assumption that the lease is a lease for the purpose of collecting rent only. The reply to the first question, therefore, must be confined to cases where the purpose of the lease is primarily to collect rent and I would refrain from expressing

any opinion in regard to a case where the lease is mainly one to enable the lessee either to cultivate the land himself or to get it cultivated by establishing tenants upon them.

**11.** The answer to the second question is closely bound up with the answer to the first because if it is held that the lease in question is not an agricultural lease and does not fall within the scope of the Bihar Tenancy Act, it must also be held that the suit for arrears of rent due on such a lease is not governed by Article 2 of Schedule 3, Tenancy Act. I would, therefore, answer the second question in the negative.

As to the third question I would answer it in the affirmative accepting the view laid down in *Mahabir Das v. Udit Narain Verma A.I.R. (1938) 25* in which it was said that.

the receiver was in juridical possession of the estate by the implicit consent of the parties under the orders of the Court and he must be treated as a landlord for the time being.

**12.** The only point which remains to be considered is what is the order to be passed in this appeal. If the appeal is not governed by the Bihar Tenancy Act, it is clear that the limitation in this case is not three years but six years. This is what has been held by the Courts below and I would affirm that view and dismiss this appeal with costs.

**Chatterji, J.**

I agree.

**Manohar Lall, J.**

**13.** The facts necessary for the decision of the questions formulated for the opinion of the Full Bench have been very clearly set forth in the judgment of my Lord the Chief Justice and it is unnecessary for me to re-state them. Before I consider the case law I must find out the nature of the lease which governs the rights of the parties in this case. After reciting as to how 69 villages appertaining to mokaarari mahal Lakhaipur and others situated within tauzi No. 3160 have been attached under the Code of Criminal Procedure and that a receiver has been appointed under Section 146, Criminal P.C. the registered indenture signed by the lessor and the lessee dated 2dth October 1932, states:

Whereas under the orders of the District Magistrate of Gaya dated 7th July 1927 the villages, detailed in Schedule 1 attached hereto, have been leased out to me for a period of seven years commencing from the month of Asarh 1339 to the month of Jeth 1346 Fasli on an annual rental of Es. 1618...(a) That this thica lease has come into operation under orders contained in parwana No. 313...(b) That the rental payable by the lessee to the lessor...shall in case of default on the part of lessee be recoverable under the provisions of the Bihar and Orissa Public Demands Recovery Act...and in case of default of four consecutive kists the lease shall stand forfeited and the lessor shall be entitled to re-enter immediately without any reference to the lessee and in such a case the lessee shall also be liable to half of one year's rental as damages...(c) That the lessee shall keep all the irrigation works of every sort and description...and shall also keep all the kutcheris and other buildings ...in the same condition in which they have been leased and shall repair them from time to time as occasion requires...(d) That the lessor shall...maintain the...four irrigation channels... and shall repair them from

time to time as occasion would require and the lessee shall not have to bear any portion of the cost of the same...(f) That the lessee shall not either out or cause to be cut any tree, whether fruit bearing or not...and the lessee shall not plant and shall not cause to be planted any tree of any kind...without permission in writing of the lessor having been obtained beforehand, (h) That the lessee shall not have the right to transfer his interest or to sublet it or to take in a partner without the permission in writing of the lessor, (j)(sic) That the lessee shall take proper care of the boundaries of the villages leased out...and as soon as there is encroachment of any kind by any body on any portion of any of the leasehold villages...he shall inform the lessor of the same immediately?... (m) That if during the period of the lease the lessee, aforesaid, wants to make any earth work or to construct any new irrigation work the lessee shall have to place the whole scheme thereof in writing before the lessor and to obtain his sanction in writing...(n) That the lessee shall deal always with the tenancy fairly equitably and in accordance with law.

**14.** I am quoting only important paragraphs from the translation supplied to us by the parties. It is clear to my mind that this lease is a lease purely for the purpose of collecting rent and can in no sense be called a lease for agricultural purposes : see Raja SatyaNiranjan Chakravarti v. Sarajubala Devi MANU/PR/0004/1929. This fact distinguishes the cases of which 9. W.W. Broucke v. Sri Panch Rani Chhatar Kumari Devi A.I.R. 1925 Pat. 421 may be taken to be a type. It will be observed that in that case after considering the terms of the lease the learned Chief Justice, observed at p. 435 that the terms of that lease pointed to the conclusion that.

the lease was one for agricultural purposed. I do not think it can be said that the main purpose of the lease was merely to collect rents. It was I think a lease for agricultural purposes.

Section 117, T.P. Act, provides that none of the provisions of chap. 5 applies to leases for agricultural purposes. As the lease in question is not for agricultural purposes, in my opinion, the provisions of the Transfer of Property Act must apply to it.

**15.** But can the lessee under such a lease be called a tenure-holder so as to bring into operation the provisions of the Bihar Tenancy Act as well? Section 5, Bihar Tenancy Act, defines a tenure-holder to mean primarily a person who acquires from the proprietor a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it. I am quoting only that part of Sub-clause (1) which applies to this case. It cannot be seriously argued that this definition of a tenure-holder would apply to a person who has acquired from a proprietor the right to hold land for the purpose of collecting rents from agricultural land although it has been let out for a non-agricultural purpose. The rents, therefore, in the section must mean agricultural rents. But it is the purpose of the tenancy which would decide whether such a lessee is a tenure-holder within the meaning of the Bihar Tenancy Act and that seems to be the intention of the Legislature as expressed by Section 117, T.P. Act, otherwise as was well stated by Banerjee J. in Umrao Bibi v. Mahomed Rojabi (1900) 27 Cal. 205 at page 209:

We find in Chap. V.T.P. Act, in which Section 117 occurs, certain provisions of the law relating to leases of immovable property, which obtain simultaneously with the provisions of the Bengal Tenancy Act, and the two

enactments being different in many respects, it could not have been the intention of the Legislature that a case might, at the option of any party, be brought indifferently under the provisions of the one enactment or the other. The two enactments must have been intended to have separate application; and the line of demarcation between the two is, to a certain extent, indicated by Section 117, T.P. Act, which enacts that none of the provisions of the chapter in which that section occurs applies to leases of immovable property for agricultural purposes, except in certain cases.

I am omitting the further four lines from the remarks of the learned Judge because I do not agree that the distinction between cases coming under the Transfer of Property Act, and those coming under the ordinary Rent law, is constituted by the fact of the land being non-agricultural or agricultural (as has been perhaps inadvertently stated therein) but must depend on the purpose of the lease agricultural or non-agricultural, and I think that is what the learned Judge intended to say.

**16.** The consideration of some other provisions of the Bihar Tenancy Act leads to the same conclusion. It must be borne in mind that the Bihar Tenancy Act is mainly concerned with protecting the rights of the raiyats or the tenants and defining them as sharply as it could from or even against the rights of the landlords which it intended to curtail in many important respects. Therefore, under Section 5(i) it is provided that in determining whether a tenant is tenure-holder or raiyat the Court shall have regard to the purpose for which the right of tenancy was originally acquired and then lays down the presumption in Section 5(5).

**17.** What is a tenure-holder A tenure-holder in my opinion must be one who is in possession of the land as holding in the sense that he holds land for agricultural purposes. In the dim past when large areas of land were being reduced to cultivation and vast tracts were being reclaimed it must have happened that a powerful person either began to cultivate the land (so reduced or reclaimed) himself or through his vassals or brought or established tenants on it, but still he was holding the land for agricultural purposes. Only such persons are sought to be protected by various tenancy laws and by Chap. III, Bihar Tenancy Act. The term 'tenure-holder' applies truly to the position of such a person. Otherwise I do not see any reason why an ijaradar or a zarpushgi lessee or a farmer of rents should not be called a tenure-holder because he has a right to hold land for the purpose of collecting rent. Section 22(s) itself recognises a distinction between a tenure-holder and an ijaradar or a farmer of rents. In a case under the Madras Estates Land 9 Act reported in *Surisetty Butchayya v. Parthasarathy Appa Row* A.I.R. 1922 P.C. 243 their Lordships expressed themselves thus at page 394:

The words 'ijaradar and farmer of rent occurring in this Sub-section (that is to say, the Sub-section which deals with permanent right of occupancy) are not synonymous. They denote two classes of person. They are not defined in the definition clause. If ijaradars and farmers of rent are ryots at all they are, as appears from Section 46, non-occupying ryots, and cannot be converted into ryots with a permanent right of occupancy.

These observations lend support to my view that it is difficult to call an ijaradar or a farmer of rent as raiyat. Again, take Section 179(a), Bihar Tenancy Act, which provides:

Nothing in this Act shall be deemed to prevent a fit proprietor or a holder of a

permanent tenure in a permanently settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

**18.** Now a permanent mukarridar may also be called a tenure-holder in the loose sense of the word, but the Legislature is not out to protect such a person because he becomes practically in the position of a proprietor and so a permanent mukarrari lease is kept outside the provision of the Bihar Tenancy Act. If the matter is looked at in this way there is no difficulty in deciding the question in controversy. I, therefore, hold that a tenure holder within the true meaning of Bihar Tenancy Act is a person with whom land is settled for agricultural purposes and not a person who merely gets a right to collect rent as a dominant purpose of the lease. Each case will be decided on its own facts by construing the terms of settlement.

**19.** Indeed if the decision of their Lordships of the Judicial Committee in *Raja Satya Niranjan Chakravarti v. Sarajubala Devi* MANU/PR/0004/1929 is kept in view the question does not seem to admit of much argument. In that case it was distinctly decided by the learned Judges of the Calcutta High Court, whose judgment was affirmed in appeal by their Lordships, that a tenancy which is created for the purpose of realising rents from cultivators is not a tenancy which is exempted from the provisions of the Transfer of Property Act, and, therefore, the provisions of Bihar Tenancy Act have no application. This case was sought to be distinguished by Dhavle J. when he delivered the judgment of the Division Bench of this Court in *Sri Ram Chandra Naik v. Ajodhya Singh* A.I.R. 1935 Pat. 508. But with great respect I do not see the distinction which is attempted to be made at p. 15. The learned Judge refers to the case of *W.W. Broucke v. Sri Panc* A.I.R. 1925 Pat. 421h *Rani Chhatar Kumari Devi* at p. 18 and says that upon the construction of the lease in the case before him the lease resembled with the lease in *Chhatar Kumari Devi's* case *W.W. Broucke v. Sri Panch Rani Chhatar Kumari Devi* A.I.R. (1925) Pat. 421 but I have already held that the lease in the present case differs from the lease in *Ghatar Kumari Devi's* case *W.W. Broucke v. Sri Panch Rani Chhatar Kumari Devi* A.I.R. 1925 Pat. 421 and was not a lease for agricultural purposes but merely to collect rent. Further I do not see how the case in *Ballabh Das v. Murat Narain* A.I.R. (1926) All. 432 can be distinguished. I have already pointed out that the passage in the concluding observations of Banerjee J., which have been relied on by Dhavle J. at the top of page 17 did not represent the true view. For these reasons, with respect, I would dissent from the decision in *Sri Ram Chandra Naik v. Ajodhya Singh* A.I.R. 1935 Pat. 508 if it is intended to lay down that in every case whether the lease is for agricultural purposes or not the lessee must be deemed to be tenure-holder to whom the provisions of the Bihar Tenancy Act must apply if only he is a lessee of agricultural land. I would repeat that it is the purpose or dominant purpose of the settlement that would decide the question whether the Transfer of Property Act or the Bihar Tenancy Act applies.

**20.** In a more recent decision of the Calcutta High Court decided in *Alauddin Ahmad v. Tamijuddin Ahmad* MANU/WB/0113/1937 : AIR1937Cal587 the learned Judges have taken the same view. With respect I agree with the following remarks of Biswas J., at page 640:

The better view, accordingly, as I have indicated above, is to hold that the Bengal Tenancy Act applies only to a lease for an agricultural purpose, and not to a lease which is a lease of agricultural lands, but not e for agricultural purpose. This will avoid the necessity of holding that a lease not being for an agricultural purpose will be subject to the provisions of Chap. V.T.P. Act, for

certain purposes, but that, for the purposes of limitation, it will be governed by the provisions of Bengal Tenancy Act. Neither authority nor principle requires the acceptance of such an anomalous position.

**21.** I would, therefore, answer the first question in the negative as proposed by my Lord the Chief Justice.

**22.** The second question is now easy of solution because it is linked up with the answer to the first question. The moment it is held that the lease in question is not an agricultural lease or rather not a lease for agricultural purposes and that the lessee does not fall within scope of the Bihar Tenancy Act, it must follow that Schedule 3, Article 2, Bihar Tenancy Act, can have no application. The second question must, therefore, be answered in the negative.

**23.** The third question must be answered in the affirmative as I see no reason for doubting the correctness of the view laid down in *Mahabir Das v. Udit Narain Verma* A.I.R. (1938) 25 in which I observed that "the receiver was in juridical possession of the estate by the implicit consent of the parties under the orders of the Court and he must be treated as a landlord for the time being."

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