

Adyanath Ghatak - - - - - Appellant

v.

Krishna Prasad Singh and another - - - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 7TH DECEMBER, 1948.

Present at the Hearing:

LORD UTHWATT
LORD MORTON OF HENRYTON
LORD REID
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree dated the 21st April, 1943, of the High Court of Judicature at Patna, which reversed a judgment and decree dated the 27th May, 1940, of the Subordinate Judge, Dhanbad, Bihar.

The suit out of which this appeal arises was commenced on the 11th January, 1939, in the Court of the Subordinate Judge, Dhanbad, Bihar, by the 1st respondent, who will hereafter be referred to as "the plaintiff," against the appellant, who will hereafter be referred to as "the 1st defendant," and the 2nd respondent, who will hereafter be referred to as "the 2nd defendant." The plaintiff claimed a declaration of his title to the land in suit and a decree for possession against defendant No. 1, and other relief which is not material to the present appeal. The property in suit was a plot No. 2192, with buildings thereon, situate in the district of Manbhum, Pargana Jharia.

The claim of the plaintiff against the 1st defendant was based on the contention that the 1st defendant was his tenant and estopped from disputing his title to the land in suit. The learned Subordinate Judge, whilst not questioning the general proposition of law, embodied in India in section 116 of the Evidence Act, which precludes a tenant of immovable property during the continuance of the tenancy from denying that his landlord had at the beginning of the tenancy a title to such property, considered that the estoppel had been terminated by the eviction of the plaintiff and the 1st defendant by title paramount. In appeal, the High Court agreed that eviction by title paramount would terminate the estoppel, but considered that there had been no such eviction, and that the 1st defendant was estopped from disputing the title of the plaintiff. Accordingly the High Court decreed the plaintiff's suit against the 1st defendant. It is apparent that the difference between the courts in India arose upon the facts proved and the inferences to be drawn from them, and this is the matter which falls for determination in the present appeal.

Prior to the commencement of the suit the plaintiff claimed to be entitled to the property in suit which formed part of the Jharia Raj estate. The 2nd defendant in suit No. 48 of 1919, which originated in the Subordinate Court of Alipore and was finally decided in appeal by His Majesty in Council, had established his title as proprietor of the Jharia Raj estate including the property in suit. Notwithstanding this the plaintiff had got his name recorded as the owner in possession of the property, plot No. 2192, in the local Record of Rights on the 26th January, 1925.

On the 19th August, 1925, the 2nd defendant filed suit No. 57 of 1925 (hereinafter referred to as "the 1925 suit") in the Court of the Subordinate Judge of Dhanbad, Bihar, against the plaintiff and other parties praying for a declaration of his title to (*inter alia*) plot No. 2192, for vacant possession of such plot and other plots, and for cancellation of the entry of the plaintiff's name in the Record of Rights. On the 14th September, 1926, judgment was given in the 1925 suit, *ex parte* as against the plaintiff who did not appear at the hearing. The learned Judge made a declaration that the 2nd defendant was entitled to the property in suit and to get vacant possession of the same. Thereafter the plaintiff applied under the provisions of the Code of Civil Procedure to set aside the *ex parte* decree made against him in the 1925 suit. This application was dismissed on the 3rd May, 1927, and an appeal from the Order of dismissal was dismissed on the 24th July, 1928.

* On a date which has not been definitely determined but which was between the passing of the *ex parte* decree of the 14th September, 1926, and the dismissal of the application by the plaintiff to set aside such decree, the plaintiff granted to the 1st defendant an oral monthly tenancy of the property in suit, plot No. 2192, at a rent of Rs.30 per month.

Some time in 1927 a receiver of the property was appointed by the High Court at Calcutta, and the receiver was substituted as a decree-holder for the 2nd defendant in the 1925 suit. On the 29th November, 1927, the receiver applied to the court to execute the decree of the 14th September, 1926. The petition for execution prayed for getting symbolical possession of various plots including plot No. 2192.

On the 24th February, 1928, the court issued a writ of execution to the court bailiff directing him to put the receiver in possession of the properties covered by the decree and authorising him to remove any person bound by the decree who might refuse to vacate the property. On the 27th February, 1928, the bailiff gave symbolical possession intimating the contents of the writ by beat of drum. In his report to the court, the bailiff stated that on certain plots, including plot No. 2192, people were residing and as the outer doors were closed he could not give delivery of possession by having the houses vacated. On the same day the employees of the decree-holder on his behalf signed a receipt for delivery of possession of plot No. 2192. As the 1st defendant was in occupation of plot No. 2192 as a tenant of the judgment debtor, their Lordships think that the court bailiff was justified in giving symbolical possession under Order XXI, rule 36, and that thereby the possession of the plaintiff and the 1st defendant was effectively terminated on the 27th February, 1928. (See *Thakur Sri Radha Krishna Chanderji v. Ram Bahadur* 22 C.W.N. 330.)

The main difficulty in the case lies in determining what happened after that date and what legal position resulted. In his evidence the 1st defendant stated that on the day after delivery was made as aforesaid he approached the 2nd defendant who permitted him to remain in occupation of the house in suit and said that he would see to it later on. The 1st defendant says that he also approached the office of the receiver who also permitted him to occupy the house. He admits that after the 27th February, 1928, he continued to pay the sum of Rs.30 per month to the plaintiff, but his case is that he paid that sum, not as rent, but out of fear of the plaintiff. The learned Subordinate Judge believed this story, but the High Court rejected it, and held that the Rs.30 per month were paid as rent, and that accordingly the 1st defendant remained the

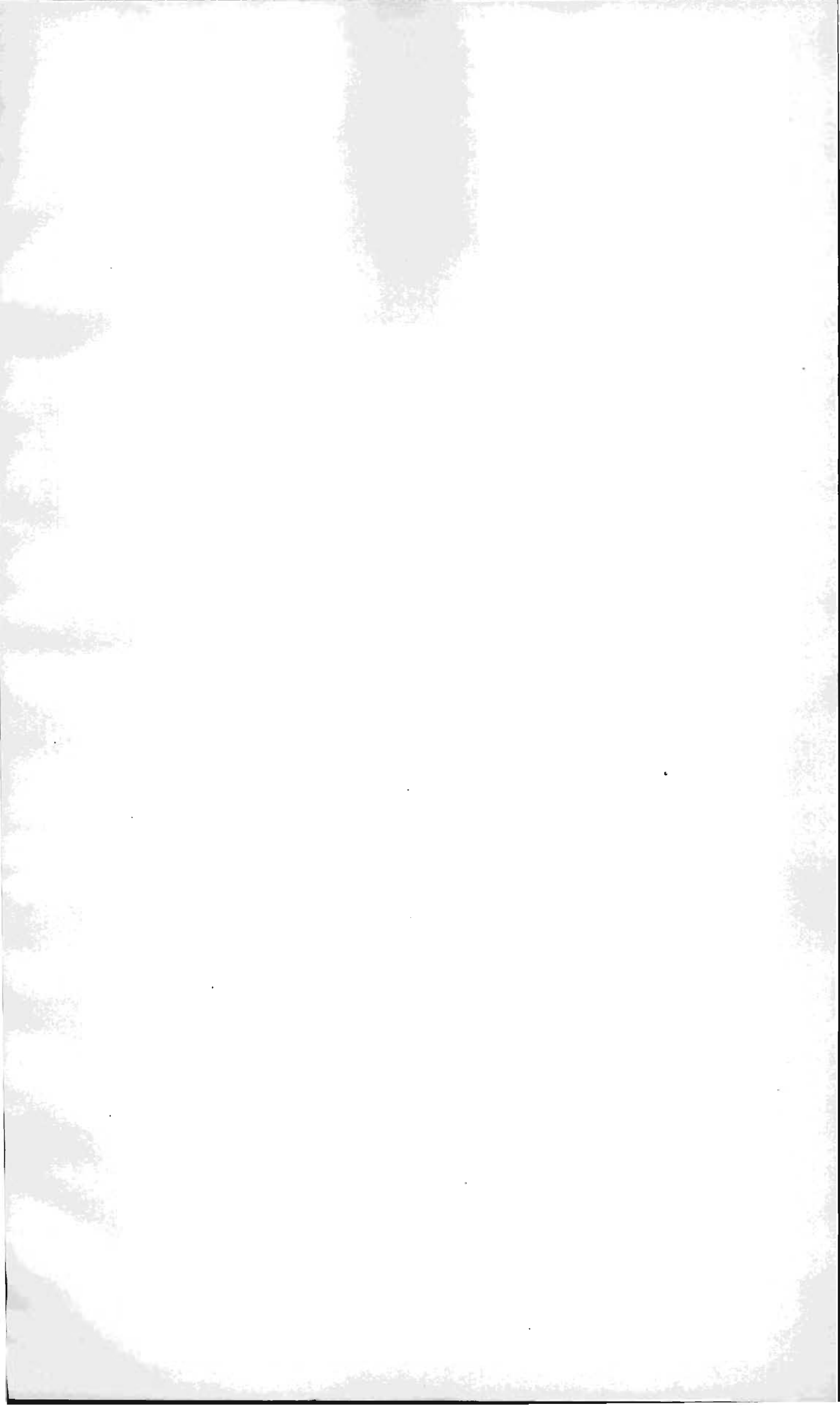
tenant of the plaintiff. On the 28th December, 1937, the 2nd defendant granted to the 1st defendant a permanent lease, Exhibit G, of the plot No. 2192 at an annual rent of Rs.51. Thereafter the 1st defendant remained in occupation of the property, and ceased to pay the sum of Rs.30 per month to the plaintiff. The learned judges of the High Court considered that the taking of this lease amounted only to a voluntary attornment to the 2nd defendant, and did not constitute eviction by title paramount. The difficulty in ascertaining the facts is enhanced by the attitude adopted by the 2nd defendant who put in a written statement in which he admitted the claim of the plaintiff against the 1st defendant, and alleged that the lease, Exhibit G, was obtained by undue influence and fraud on the part of the 1st defendant. The 2nd defendant did not give evidence, and the suit was dismissed against him as also was the appeal to the High Court. He has not appeared on this appeal.

In their Lordships' view the position is this. The original tenancy between the plaintiff and the 1st defendant was determined on the 27th February, 1928, by execution of the decree of the 14th September, 1926. Their Lordships see no reason to reject the story of the 1st defendant that immediately after this date he got permission from the 2nd defendant and from an official in the office of the receiver to remain in occupation of the property in suit, a story which was not contradicted by the 2nd defendant or the receiver, and was believed by the trial judge. If this story be accepted then the 1st defendant, after the 27th February, 1928, was in occupation of the property as licensee of the 2nd defendant or the receiver. The payment of Rs.30 per month to the plaintiff no doubt creates a difficulty. If this transaction stood alone it would justify an inference that the 1st defendant was a monthly tenant of the plaintiff, and, since the old tenancy had been determined by eviction by title paramount, a fresh tenancy would have to be inferred commencing after the 27th February, 1928. In their Lordships' opinion however any such inference would be inconsistent with the facts proved. After the execution of the decree of the 14th September, 1926, both parties knew that the plaintiff had no interest in the property, and the 1st defendant had obtained a right to occupy from the true owner. The 1st defendant may well have been ready to continue to pay the amount of his former rent to the plaintiff in order to keep him quiet and prevent him from attempting to interfere with the grant of the lease which the 1st defendant hoped to obtain from the 2nd defendant. The fact that in this suit the 2nd defendant is siding with the plaintiff against the 1st defendant suggests that the latter's fear of the influence of the plaintiff may not have been without justification. At any rate, whatever the reason for the payment, their Lordships are satisfied that after the 27th February, 1928, the payment of the sum of Rs.30 by the 1st defendant to the plaintiff was not a payment of rent, that the 1st defendant was in occupation as licensee of the 2nd defendant or the receiver until 1937 when the lease, exhibit G, was granted under which the 1st defendant remained in occupation. On this view of the facts no question of the 1st defendant being estopped from disputing the title of the plaintiff as his landlord arises since the plaintiff was not his landlord at any time after the 27th February, 1928, when the original tenancy was determined.

In the case of the plaintiff, as 1st respondent delivered in this appeal, he claimed that even if he was not entitled to possession of the property in suit, he was nevertheless entitled to remove the materials with which the house on the property had been constructed. Assuming that the house in question was erected by the plaintiff at his own expense, any right which he had to remove the house or the materials of which it was constructed should have been claimed in the 1925 suit as against the 2nd defendant. The decree in that suit drew no distinction between the land and the house erected thereon, and symbolical possession was given

in execution of the decree of the whole plot. Whatever right the plaintiff may have had originally, the claim to remove the materials with which the house was erected has long since lapsed.

For these reasons their Lordships will humbly advise His Majesty that this appeal be allowed, that the decree of the High Court of Judicature at Patna dated the 21st April, 1943, be set aside, and that the decree dated the 27th May, 1940, of the Subordinate Judge, Dhanbad, Bihar, be restored. The 1st respondent must pay the costs of the appellant in the appeal to the High Court and the costs of this appeal to His Majesty.



In the Privy Council

ADYANATH GHATAK

v.

KRISHNA PRASAD SINGH AND ANOTHER

DELIVERED BY SIR JOHN BEAUMONT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.
1948