

## MAHESH BHAGAT

A

v.

## RAM BARAN MAHTO &amp; ORS.

April 11, 1968

[R. S. BACHAWAT AND K. S. HEGDE, JJ.]

*Bihar Tenancy Act (Act 8 of 1885)—Sections 5(2), 21(1)—Construction of deed—whether lease or usufructory mortgage Tenure-holder prohibited from executing leases for terms extending beyond the term of the tenure—Tenants inducted by tenure-holder—Whether acquires occupancy rights.*

B

A, the predecessor-in-interest of the plaintiff executed a thika patta in favour of B, in respect of a village for a term of 40 years from 1320 to 1959 fasli, the rent to be appropriated up to 1344 fasli towards satisfaction of debts owing from A to B and others. The patta B stipulated that B could not execute a lease in favour of any tenant for any term extending beyond 1359 fasli. B settled plots in the village with the predecessors-in-interest of the defendants. The first settlement was for 5 years from 1347 to 1351 fasli. The second settlement was for 5 years from 1352 to 1356 fasli. The tenants were settled raiyats of the village. After the expiry of the term of the thika patta, the plaintiff instituted a suit for recovery of possession of the plots. The Courts below dismissed the suit. In an appeal to this Court it was contended that (1) the thika patta was a mortgage and not a lease and the mortgagee B had no authority to induct raiyats, and (ii) that assuming that it was a lease, B had no authority to settle raiyats having occupancy rights enuring after the expiry of the lease. It was conceded that if the thika patta was a lease, B was a tenure-holder.

C

D

HELD : dismissing the appeal,

E

(1) The thika patta was a lease and not a usufructory mortgage. The gist of the document was letting for the full term of 40 years. There was no express or implied grant of a right of redemption on repayment of the loan. The document was not intended to create relationship of debtor and creditor or a security for the repayment of a debt; [744 D]

F

(2) The tenants of B, having acquired the right to hold land as cultivating tenants of a tenure-holder, were raiyats as defined in s. 5(2) of the Bihar Tenancy Act. The tenancies were lawful at their inception. B was not prohibited by the thika patta from inducting raiyats on the land. In spite of the stipulation in the patta that B would not execute a lease in favour of any tenant for a term extending beyond 1359 fasli, the tenants acquired the right to hold the land as raiyats. As settled raiyats of the village they got rights of occupancy in the lands under s. 21(1) of the Act. [745 A-B]

G

The general rule is that no one can confer on another a better title than he himself has. B could not make a grant of the right to occupy the lands after the expiry of the lease in its favour. But the right of occupancy is not the creation of any grant from B. It is conferred by s. 21(1). As the tenants are raiyats, the law steps in and protects them from eviction. [745 B-C]

H

*Mahabir Gope v. Harbans Narain Singh*, [1952] S.C.R. 775, distinguished.

*Atal Chandra Rishi v. Lakhi Narain Ghose* 10, C.L.J. 55 approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 394 of 1965.

A Appeal by special leave from the judgment and decree dated December 22, 1961 of the Patna High Court in Appeal from Original Decree No. 277 of 1956.

*Sarjoo Prasad* and *D. Goburdhun*, for the appellant.

B *Yogeshwar Prasad* and *Hardev Singh*, for respondents Nos. 1 and 13 to 18.

The Judgment of the Court was delivered by

C **Bachawat, J.**—On July 15, 1912 Abdul Karim the predecessor-in-interest of the plaintiff executed in favour of the proprietors of an indigo concern collectively known as the Bhikhanpur Kothi a thika patta (Ex. 4) in respect of village Khanjadpur for a term of 40 years from 1320 to 1359 fasli corresponding to 1913 to 1952. By two patta Katkenas (Exs. A and A1) dated April 25, 1940 and May 23, 1944 the Bhikhanpur Kothi settled plots Nos. 183 and 184 in village Khanjadpur with the predecessors-in-interest of the contesting defendants. The first settlement was for five years from 1347 to 1351 fasli. The second settlement was for five years from 1352 to 1356 fasli. The term of the thika patta (Ex. 4) expired in 1359 fasli. Thereafter on April 24, 1953 the plaintiff instituted the suit for recovery of possession of the plots. He also asked for certain other reliefs with which we are not concerned in this appeal. The trial court found that (1) plots Nos. 183 and 184 were bakasht and not zeriati lands, (2) the tenants under Ex. A and A1 were settled raiyats of the village, (3) the thika patta in favour of the Bhikhanpur Kothi was a lease, (4) the Kothi had the authority to induct raiyats on the village and (5) the tenants held the plots as raiyats and they acquired occupancy rights under sec. 21 of the Bihar Tenancy Act. On these findings the trial court disallowed the plaintiff's claim for recovery of possession of plots Nos. 183 and 184. The plaintiff filed an appeal in the High Court of Patna. Before the High Court the plaintiff did not dispute the correctness of the first two findings of the trial court. The High Court agreed with the other findings and dismissed the appeal. The plaintiff has now filed this appeal after obtaining special leave from this Court.

G In this Court Mr. Sarjoo Prasad contended (1) that Ex. 4 was a mortgage and not a lease and the mortgagee under Ex. 4 had no authority to induct raiyats; (2) that assuming that Ex. 4 was a lease, the lessee had no authority to settle raiyats having occupancy rights enuring after the expiry of the lease. We are unable to accept either of these contentions.

H Exhibit 4 was executed by Abdul Karim in favour of the Bhikhanpur Kothi on July 15, 1912. It was styled a thika patta. It provided that the kothi would remain in possession of Khanjad-

pur village for a term of 40 years from 1320 to 1359 fasli on payment of a fixed annual jama of Rs. 6,203/4/-. Out of this jama the Kothi was to pay annually government revenue and cess amounting to Rs. 1,203/4/-. It appears that on the same day Abdul Karim took loans from the Bhikhanpur Kothi and two ladies on executing two separate bonds. Ex. 4 provides that between 1320 to 1331 fasli the balance Rs. 5,000 of the annual jama would be paid or appropriated towards the liquidation of the two debts and between 1332 and 1344 fasli would be appropriated towards full satisfaction of the debt due to the Kothi. The deed further provided that from 1345 fasli until 1359 fasli the Kothi would pay the entire balance of Rs. 5,000 to Abdul Karim. It is to be noticed that the ladies were not parties to Ex. 4. The loan was taken from the Kothi on a separate bond. Ex. 4 provided for the repayment of the loan, but the Kothi was entitled to remain in possession for 15 years after the loan was fully satisfied. The gist of the document was a letting of the village for the full term of 40 years. There was no express or implied grant of a right of redemption of the village on repayment of the loan. The document was not intended to create a relationship of debtor and creditor or a security for the repayment of a debt. In our opinion, the transaction was a lease and not a usufructuary mortgage.

The question then is whether the tenants of the Bhikhanpur Kothi acquired occupancy rights in plots Nos. 183 and 184. Section 21(1) of the Bihar Tenancy Act 1885 (Act 8 of 1885) reads :

“S. 21(1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.”

A settled raiyat of a village is defined in s. 20 as a person who for a period of 12 years continuously held land in that village as a raiyat. It is conceded that the tenants were settled raiyats of village Khanjadpur within the meaning of s. 20. The question then is whether they held the plots as raiyats. Under s. 5(2) a “raiyat” is a person who has acquired a right to hold land as a cultivating tenant either of the proprietor or of the tenure holder. Now the sub-lessees under Exs. A and A1 were cultivating tenants of the Bhikhanpur Kothi. Exs. A and A1 provided that the tenants would cultivate plots 183 and 184, get the same cultivated by others and appropriate the produce thereof. It is conceded that if Ex. 4 was a lease, the Bhikhanpur Kothi was a tenure holder. However, Ex. 4 stipulated that the Bhikhanpur Kothi should not execute a lease patta in favour of any tenant for any term extending beyond 1359 fasli when the term of Ex. 4 would expire. It is argued that in view of this stipulation, the tenants of the Bhikhanpur Kothi could not acquire the right to hold the lands after 1359

**A** fasli. Now the settlements under Exs. A and A1 did not contravene Ex. 4. The term of the last settlement expired in 1356 fasli. The tenancies were lawful at their inception. The tenants acquired the right to hold the lands as raiyats. As settled raiyats of the village they got rights of occupancy in the lands under s. 21(1).

**B** The general rule is that no one can confer on another a better title than he himself has. The Bhikhanpur Kothi could not make a grant of the right to occupy the lands after the expiry of the lease in their favour. But the right of occupancy is not the creation of any grant from the Kothi. It is conferred by s. 21(1). As the tenants are raiyats, the law steps in and protects them from eviction.

**C** The decision in *Mahabir Gope v. Harbans Narain Singh*<sup>(1)</sup> is distinguishable. In that case the mortgagee from the proprietor settled the lands with an ancestor of the defendant. The mortgage deed prohibited the mortgagee from inducting tenants on the lands. The mortgagee was neither a proprietor nor a tenure holder. The tenant was not a settled raiyat of the village. In these circumstances the Court held that the defendant did not acquire occupancy rights in the land under secs. 20 and 21 and was liable to be ejected by the proprietor on redemption of the mortgage. In the present case the defendants are settled raiyats of the village. They held the lands as tenants of the tenure holder. There was no prohibition in the document creating the tenure against inducting raiyats on the land. In *Atal Chandra Rishi v. Lakhi Narain Ghose*<sup>(2)</sup> the proprietor granted an ijara stipulating that the ijaradar would not be competent to grant a sub-lease which was to continue after the expiry of the ijara. The ijaradar settled the lands with a tenant. The possession of the tenant in its inception was lawful. The Calcutta High Court held that in spite of the stipulation in the ijara the tenant became a raiyat whose rights were regulated by the provisions of the Bengal Tenancy Act and he could be ejected by the proprietor only on one or more of the grounds specified in s. 44. Similarly in this case the tenancy in its inception was lawful. The tenants became raiyats and as they were settled raiyats of the village they acquired rights of occupancy and could not be ejected except on one or more of the grounds mentioned in sec. 25.

**F** In our opinion, the predecessor-in-interest of the contesting defendants acquired occupancy rights in plots Nos. 183 and 184 and the courts below rightly dismissed the suit for recovery of possession of those plots.

In the result, the appeal fails and is dismissed with costs.

**H** Y.P.

*Appeal dismissed.*

(1) [1952] S. C. R. 775.

(2) 10 C. L. J. 55.