

of any particular year. The tenant himself should take care, when he makes the payment, that the receipt is in the proper form. If he does not see to that, he has no right to ask the Court to presume anything in his favour from the omission in the receipt.

The case will be remanded to the lower Appellate Court to be re-tried with reference to these observations; and the Judge will be at liberty to receive further evidence on either side.

Case remanded.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

GODADHAR DASS (THIRD PARTY) v. DHUNPUT SING (SECOND PARTY).*

1881
BIBEE
SYEFUN
v.
RUDDER
SOHAY.

1881
June 14.

*Land Acquisition Act (X of 1870)—Apportionment of Compensation-money—
Zemindar—Patnidar—Darpatnidar—Construction of Document.*

Where a patni and a darpatni has been given of land, which is afterwards acquired by the Government for public purposes, under the provisions of the Land Acquisition Act, the zemindar is, generally speaking, entitled to as much of the compensation-money as the patnidar is.

As a rule, ryots having a right of occupancy in such land, and the holders of the permanent interest next above the occupancy ryots, are the persons entitled to the larger portion of the compensation-money.

The principles on which compensation-money should be apportioned among the different holders discussed and explained.

Construction of darpatni lease.

IN this case it appeared that the Raja of Burdwan granted a patni lease of a certain zemindari in the district of Dinapore to Roy Dhunput Singh, who granted a darpatni lease thereof to one Godadhar Doss on the 6th February 1868. A portion of this land, amounting to about five bighas, was taken up by the Government for public purposes under the provisions of the Land Acquisition Act, X of 1870; and the question in this case was, how the money which was awarded by the Government should be apportioned. The kabuliat given by

* Appeal from Original Decree, No. 336 of 1879, against the decree of L. B. B. King, Esq., Judge of Dinapore, dated the 24th September 1879.

1881
 GODADHAR
 DASS
 v.
 DRUNPOT
 SING,

the darpatnidar to the patnidar on the 6th of February 1868 provided, that "should any land included in the lot, be taken by Government when required, or should it be included in the road, in that case you will allow me a deduction of the rent-jama for that portion of the land, if you get deduction from the patni-jama of the zemindar for the same; I have no concern with the consideration-money paid." The District Judge of Dinagepore, whose judgment was as follows, awarded the whole of the compensation to the patnidar:—

"This reference has arisen from the acquisition of certain land for railway purposes. The parties claiming interest in the land have agreed to the amount of compensation awarded, and the question for determination is the apportionment of that amount between these claimants—the zemindar, the patnidar, and the darpatnidar. The zemindar's interest in the land is not affected so long as he receives the rent reserved by his lease. His security for this rent is not appreciably lessened, since only a small fraction of the tenure has been taken up, and the amount of rent cannot be lessened, as the patnidar, through his pleader, undertakes to make no claim for remission. The zemindar can, therefore, lose nothing; and has, in consequence, no just claim to any part of the compensation. On similar grounds, it is argued, that the patnidar has no claim as against the darpatnidar, and that the latter should receive the entire amount awarded; but this is stated on the part of the patnidar to be opposed by a special provision of the darpatni lease. The clause so relied on runs as follows: 'If any land belonging to the estate is taken up for roads, or at the necessity of Government, and in case of your having an abatement in the rent of the said land in the patni dowl jama from the zemindar, you shall have to allow me too a reduction accordingly. I have no concern with the price.' For the patnidar it is contended, that the word 'price' here means the price paid by Government for land taken up, while for the darpatnidar the word is said to mean the price paid for the darpatni lease to the patnidar. The latter construction does not appear to me to be admissible. The darpatnidar could not well say he would have no concern with the price he was paying, and there being

no reference in the immediate context to this price, it would scarcely be referred to thus briefly as 'the price.' The word naturally refers to the land supposed in the same sentence to be taken up by Government, and the darpatnidar must be considered to have waived any claim to the price of that land. By virtue then of his special contract with the darpatnidar, the patnidar is entitled to the compensation awarded, and will receive the whole of this amount with his costs in equal proportion from the zemindar and the darpatnidar." The latter appealed to the High Court.

1881
 GODADHAR
 DASS
 v.
 DEBUNPUT
 SING.

Baboo *Grija Sunker Mozoomdar*, for the appellant, argued, that all the compensation ought to have been awarded to the darpatnidar, as he was the person solely affected, and that the Court below was wrong in its construction of the darpatni lease.

Baboo *Gurudas Banerjee* and Baboo *Srinath Das*, for the respondent, argued, that, under the general law, the patnidar was entitled to the abatement—*Horohissen Banerjee v. Joy Kissen Mookerjee* (1), *Deen Dyal Lal v. Mussamut Thukroo Koonwar* (2), *Raye Kissory Dasse v. Nilcant Day* (3), *Sreenauth Mookerjee v. Maharajah Mahatap Chand Bahadoor* (4), *Gordon, Stuart and Co. v. Maharajah Mahatap Chand Bahadoor* (5); and that there was nothing in the darpatni lease to take away the patnidar's legal right.

Cur. ad. vult.

The judgment of the Court (GARTH, C.J., and McDONELL, J.) was delivered by

GARTH, C.J.—We think that the District Judge has taken an erroneous view of the rights of the parties. The amount in question is inconsiderable; but the principle upon which the case depends is an important one; and as we had some doubt whether the view which we were at first disposed to take was correct, we have had the case argued a second time.

(1) 1 W. R., 299.

(3) 20 W. R., 370.

(2) 6 W. R., Act X Rul., 24.

(4) S. D. A., 1860, p. 308.

(5) Marshall, 490.

1881
 GODADHAR
 DASS
 v.
 DHUNPUT
 SING.

Under the Land Acquisition Act of 1870, the Government took a small piece of land, containing rather more than four bighas, in the district of Dinagepore, for the purposes of the Northern Bengal State Railway. The agreed amount of compensation in respect of the whole of this land was Rs. 104-4-2; and three claimants only appeared—the Raja, who was the zemindar, the patnidar, and the darpatnidar. The District Judge held, that so long as the zemindar continued to receive from the patnidar his entire rent under the patta, without any abatement in respect of the land in question, his interests would not be affected; and as at the hearing of the case in the Court below the patnidar undertook, through his pleader, to pay the whole rent to the zemindar, without diminution, the District Judge held, that the zemindar was entitled to no part of the compensation. Then, as regards the darpatnidar, the District Judge held, that, under a particular clause in the darpatni patta, he was disentitled to any compensation. That clause ran as follows:—

“If any land belonging to the estate is taken up for roads, or at the necessity of Government, and in case of your having an abatement in the rent of the said land in the patni dowl jama from the zemindar, you shall have to allow me too a reduction accordingly. I have no concern with the price.”

The only question which appears to have been raised in the Court below with reference to this clause, was as to the meaning of the word ‘price.’ The patnidar contended, that it meant the compensation paid by the Government for the land taken; whilst the darpatnidar contended, that it meant the price or premium paid by him to the patnidar for his darpatni. Upon this point the Judge decided, very justly in our opinion, that the patnidar was right; and that the word ‘price’ meant clearly the compensation payable by the Government; and as he considered that this was the only question between the parties, he held that, by this clause, the darpatnidar had relinquished his right to any compensation; and he, consequently, awarded the whole sum to the patnidar.

We think that he was wrong in two respects;—in the first place, he should have awarded some portion at least of the com-

pensation to the zemindar; and in the next, we think that, in the construction which he put upon the clause in the darpatnidar's patta, one very material point was overlooked.

As regards the zemindar it is a mistake to suppose, that his interest in the land is confined entirely to the rent which he receives from the patnidar. He is the owner of it under the Government; and in the event of the patni coming to an end by sale, forfeiture, or otherwise, the property would revert to the zemindar, who might deal with it as he pleased in its improved state; and although in some cases, and possibly in this, the chances of the patni coming to an end may be more or less remote, there is no doubt that, in all cases, the zemindar is entitled to some compensation (small though it be) for the loss of his rights. At any rate, he would generally be entitled to receive at least as much as the patnidar, to whom in this instance the whole compensation has been awarded. If the latter continues to pay and receive the same rent which he did before, or if, on the other hand, he both makes an abatement to the darpatnidar, and obtains an abatement from the zemindar, as a rule he is no sufferer; because, generally speaking, the difference between the amount of rent which he pays and the rent which he receives, represents the improved value of the land which he gets from the darpatnidar. It may be of course, that his patni interest would sell in the market for a price larger than the capitalized value of the rent which he receives from the darpatnidar; and if so, he would be entitled to be compensated for the loss of the difference out of the sum payable by the Government. But as a rule, the capitalized value of the darpatni, over and above the value of his own outgoings, would represent the market value of his patni interest.

The parties who usually suffer most from lands being taken for Government purposes are either the ryots with right of occupancy, or the holders, whoever they may be, of the first permanent interest above the occupying ryots. The actual occupier is of course turned out by the Government, and if he is a ryot with a right of occupancy, he loses the benefit of that right, besides being driven possibly to find a holding and a home elsewhere; and the holder of the tenure immediately

1881

GODADHAR
DASS
c.
DHUNPUT
SING.

1881
 GOPADHAR
 DASS
 v.
 DHUNPUT
 SING.

superior to the occupying ryots, whatever the nature of his holding may be, loses the rent of the land taken during the period of his holding. These two classes, therefore, would, generally speaking, be entitled to the larger portion of the compensation, and if the darpatnidar in this instance belongs to the latter class, the larger portion of the compensation ought, presumably, to have gone to him.

But the Judge thought him disentitled by the clause in his darpatni; and certainly his case does not appear to have been argued very clearly in the Court below. The whole compensation was given to the patnidar, who, as far as we can see, has neither lost nor gained anything at present by the taking of the land. He pays the same rent to the zemindar, and he has hitherto received the same rent as before from the darpatnidar. It may be, that the darpatnidar has a claim against him for abatement of rent; and if this claim is enforced, the patnidar may be a loser to the extent of the capitalized value of the abatement. But at present there seems to be no evidence that he has lost, or is likely to lose, anything.

But then is the darpatnidar disentitled to receive compensation by the clause in his patta? We think not; because in this instance the condition has not happened which would disentitle him. As we read the clause, it only provides that, in the event of the Government taking land, &c., and *also in the event of an abatement of rent being made by the zemindar to the patnidar*, then the darpatnidar agrees to be content with a corresponding abatement from the rent which he pays to the patnidar, and in that case he relinquishes his claim to the Government compensation. But this relinquishment is to depend upon the two events, the taking of the land by Government, and the abatement being made in the patnidar's rent. No abatement has been made in this instance in the patnidar's rent; and consequently the condition upon which alone the clause was to take effect has not happened.

The case must, therefore, go back to the Court below to have the compensation divided in accordance with the principles which we have laid down. The zemindar has not thought fit to appeal, probably because the smallness of the amount did

not make it worth his while to do so ; and he, therefore, must be excluded. There are only the two claimants therefor ; the District Judge will endeavour to make a fair division of the sum between them ; and before doing so, he will do wisely to make the parties come to some arrangement as to the abatement or otherwise of the darpatnidar's rent.

The appellant having substantially succeeded, will be entitled to the costs of this appeal ; and the costs in the Court below will abide the result.

Case remanded.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

MOHABEER PERSHAD SINGH (DEFENDANT) v. MOHABEER SINGH
(PLAINTIFF).*

1881
May 31.

*Recovery of Possession—Dispossession—Ejectment—Evidence—Onus—
Proof of Title.*

In June 1878, the plaintiff sued the defendant for the recovery of possession of certain land. At the trial it was proved, that he had been continuously in peaceable possession of the land until the month of May 1878, when he was forcibly and illegally dispossessed by the defendant.

Held, that the evidence was sufficient to call upon the defendant to show his title to the land.

THIS was a suit, instituted on the 28th of June 1878, for the recovery of possession of land, from which the plaintiff had been dispossessed by the defendant. The plaint stated, that the land of the plaintiff adjoined that of the defendant on the south and east ; that, on the 26th of May 1878, the defendant moved the southern boundary-mark, and on the 29th of May 1878 he moved the eastern boundary-mark, the combined effect of which was, that the defendant took possession of 10 biswas of land, which, up to that time, had been in possession of the plaintiff, and held by him as moafi land under a sanad, dated the

* Appeal from Appellate Decree, No. 712 of 1880, against the decree of Baboo Kally Prosonno Mookerjee, Second Subordinate Judge of Sarun, dated the 30th January 1880, affirming the decree of Baboo Tara Prosonno Bajerjee, Sudder Munsif of Chupra, dated the 15th February 1879.