

1930.

directed that the Rs. 6,095-15-0 be paid over to the appellants.

JOKHIRAM
SURAJMAL
FIRM

The appeal is allowed with costs.

v.
CHOUTHMAL
BHAGRATH.

ADAMI, J.—I agree.

Appeal allowed.

WORT, J.

APPELLATE CIVIL.

Before Adami and Wort, JJ.

CHAMRU SAHU

v.

KANAK SINGH MUNDA.*

1930.

April, 28.

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), section 256—holding recorded as “maurusi khunt-katti”—evidence showing tenant as Munda admitted—finding that tenancy was “mundari khunt-katti”—evidence, whether wrongly admitted.

Section 256, Chota Nagpur Tenancy Act, 1908, provides;

“Where a record-of-rights has been finally published under section 83 of this Act or under sub-section (2) of section 183A of the Bengal Tenancy Act, 1885, or amended under section 254 of this Act, the entries therein relating to Mundari khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such entries; and, if any tenancy in the area, estate or tenure for which the record-of-rights was prepared has not been recorded therein as a Mundari khunt-kattidari tenancy, no evidence shall be received in any court to show that such tenancy is a Mundari khunt-kattidari tenancy.”

Where, therefore, the entry in the record-of-rights showed the holding in question as “maurusi khunt-katti” and the lower appellate court admitted evidence which showed that the tenant was a Munda and, relying upon that evidence, held that the tenancy was a Mundari khunt-katti.

Held, that the mere fact that the holding was not recorded as a Mundari khunt-katti was in itself sufficient to exclude evidence under section 256 and that, therefore, the evidence was wrongly admitted.

*Appeal from Original Order no. 290 of 1929, from an order of H. R. Meredith, Esq., Judicial Commissioner of Chota Nagpur, dated the 31st August, 1929, reversing an order of Babu Gopal Chandra De, Munsif of Ranchi, dated the 18th February, 1929.

Appeal by the decree-holder.

The facts of the case material to this report are stated in the judgment of Wort, J.

Rai G. S. Prosad and Shivasankar Prosad, for the appellants.

S. K. Mitter, for the respondent.

WORT, J.—This is an appeal from the judgment of the Judicial Commissioner of Chota Nagpur allowing an objection under section 47 of the Code of Civil Procedure. The judgment-debtor raised an objection under that section regarding the sale of his holding which was described in the record-of-rights as “maurusi khunt-katti” and it was contended that that was not transferable under section 240 of the Chota Nagpur Tenancy Act and, therefore, the objection should have been allowed and the holding released from sale. The learned Munsif decided against the objection on the ground that according to the Settlement Report of the District of Ranchi, 1902—1910, khuntkatti tenure in thana Silli was transferable. The learned Judicial Commissioner in allowing the appeal against the decision of the Munsif came to the conclusion that although the tenure was described as maurusi khunt-katti, the fact that the judgment-debtor was a Munda established in its turn the fact that this was a Mundari khunt-katti and, therefore, as I have already indicated, he allowed the objection which was dismissed by the Munsif.

Sections 7 and 8 of the Chota Nagpur Tenancy Act are referred to in the argument by the learned Advocate on behalf of the appellant decree-holder. Section 7 defines a ‘raiayat having khunt-katti rights’ as a raiayat in occupation of, or having any subsisting title to, land reclaimed from jungle by the original founders of the village or their descendants in the male line. Section 8 defines a ‘Mundari khunt-kattidar’ as a Mundari who has acquired a right to hold

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WORT, J.

jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by the male members of his family, etc. It is contended on behalf of the decree-holder that the learned Judicial Commissioner is wrong in law as he has admitted evidence either to explain or contradict the record-of-rights. Section 256 is relied upon in this connection which provides that

“ Where a record-of-rights has been finally published under section 83 of this Act, or under sub-section (2) of section 188A of the Bengal Tenancy Act, 1885, or amended under section 254 of this Act, the entries therein relating to Mundari khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such tenancies and of all particulars recorded in such entries; and, if any tenancy in the area, estate or tenure for which the record-of-rights was prepared has not been recorded therein as a Mundari khunt-kattidari tenancy, no evidence shall be received in any court to show that such tenancy is a Mundari khunt-kattidari tenancy.”

It is contended on behalf of the respondent that the procedure adopted by the Judicial Commissioner is not contrary to section 256. The evidence which was received by the Judicial Commissioner was merely evidence to explain an ambiguous entry in the record; that in the absence of an entry to the effect that the judgment-debtor was a raiyat, it was necessary to adduce evidence which was adduced in this case in order to show whether it was a khunt-katti tenure under section 7 or a Mundari khunt-katti tenure under section 8 of the Act. In my judgment, the mere fact that this holding was not recorded as a Mundari khunt-katti is in itself a sufficient answer to the argument advanced on behalf of the respondent. That entry being what it was, it cannot be held under the circumstances that it was a Mundari khunt-katti and in consequence the judgment of the learned Judicial Commissioner, in my judgment, was wrong and must be reversed.

The appeal is allowed with costs.

ADAMI, J.—I agree.

Appeal allowed.