APPELLATE CIVIL.

Before Khaja Mohammad Noor and Saunders, JJ.

1936.

April, 20, 21, 22, 23 and 29.

DEBNATH MAHATA

v.

JAGDISH CHANDRA DEO DHABAL DEB.*

Chota Nagpur Tenancy Act, 1908 (*Beng. Act VI of* 1908), *sections* 60, 74*A and* 132—*pradhani tenure, if saleable for arrears of rent—record-of-rights, entry in, as to incidents of pradhani tenure, if conclusive—satwalipis—custom.*

The record-of-rights of village headmen are prepared under the orders of the local Government and are known as *satwalipis*. These *satwalipis* are conclusive evidence as to the incidents of a pradhani tenure under section 132 of the Chota Nagpur Tenancy Act.

A pradhani tenure is not saleable as a matter of course, as a tenure for arrears of rent under section 60 of the Act.

The question whether a pradhani tenure is saleable or not is governed by custom or the incidents of each particular pradhani tenure.

The pradhans are a sort of tenure-holders, and come within that class, but their treatment in the Act shows that they are also permanent agents of superior landlords for the supply of rasads, etc., in relation to the tenants, they are their landlords and their representatives. They are not tenure-holders pure and simple and form a distinct class by themselves.

Tata Iron and Steel Company, Limited v. *Raghunath Mahto*(1), relied on.

Where the *satwalipis* showed : (*i*) that on the exipiry of the term, at the time of fresh settlement, rate of rent would be fixed either amicably, by panchayat, or in accordance with law, (*ii*) that if the pradhan refuses to take settlement, it can be made with others and there was no provision for the landlord to hold the village khas, (*iii*) that the raiyats of the village

* Appeals from Appellate Orders nos. 48, 75, 76 and 83 of 1935, from an order of M. Najabat Hossain, Judicial Commissioner of Manbhum at Purulia, dated the 29th September, 1934, setting aside an order of Babu R. R. P. Sinha, Rent Suit Deputy Collector of Jamshedpur, dated the 10th March, 1934.

(1) (1918) 45 Ind. Cas. 72.

were entitled to bring into cultivation jungle lands without the permission of the landlord or the pradhan and such rights were *not* confined to lands recorded in the name of the pradhan, (*iv*) that the pradhan had no right to transfer the tenure, nor was the pradhani liable to be divided. *Held*, that the entry in the *satwalipis* coupled with the right of the tenant to apply for appointment of a pradhan in case of vacancy of the office of the pradhan under section 74A of the Act made it impossible for the landlords to sell the pradhani tenures in question for the sale would make the position anomalous.

Appeal by the judgment-debtors.

The facts of this case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

Sir Sultan Ahmed (with him *P. K. Banerjee*), for the appellants.

P. R. Das (with him *S. M. Mullick* and *G. C. Mukherjee*), for the respondents.

KHAJA MOHAMAD NOOR, J.—These four miscellaneous appeals arise out of four proceedings for execution of rent decrees obtained by the respondent against the appellants. The question involved in all these cases is the same, namely, whether the pradhani tenancy of the appellant in each case is liable to be sold in execution of the decree against him. The respondent, who is the Raja of Dhalbhum, started ten execution cases to enforce his ten rent decrees against the pradhans and wanted to bring their pradhani tenancies to sale. The learned Deputy Collector of Singhbhum, before whom the executions were started, of his own motion and without any objection on the part of the judgment-debtors summarily held that the pradhanis were not saleable. The respondent appealed. The Judicial Commissioner of Manbhum (Mr. Najabat Hossain) by his order, dated the 29th September, 1934, reversed the orders of the Deputy Collector, holding that the pradhani tenancies were saleable. All the ten

1936.

DEBNATH MAHATA *v.* JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

judgment-debtors preferred second appeals to this Court. When the cases came up before us for hearing, we found that the decisions of the courts below were based entirely upon general grounds, and not upon any examination of the incidents of the particular tenancies involved in these cases. While the learned Deputy Collector held, as I have said, that the pradhanis were not saleable, the learned Judicial Commissioner held that the pradhanis were tenures and tenures were saleable in execution of rent decrees. There were no materials on the record to enable us to determine the incidents of the tenancies of the appellants. We, therefore, allowed the parties to produce necessary documents, and the same were produced. But the number of documents intended to be produced was large, and examination of witnesses appeared necessary. Accordingly, we decided to remand the cases under Order XLI, rule 25, of the Code of Civil Procedure, with a direction to the Judicial Commissioner to receive such evidence as may be adduced by the parties and then to determine whether the pradhani in each of the ten cases is liable to be sold in execution of a rent decree either under the custom prevailing in the locality or under the law in force in the district. Mr. Dalziel, who had succeeded Mr. Najabat Hossain, received the evidence adduced by the parties and also considered the documents which were filed in this Court and taken in evidence by us and has remitted his finding to this Court. It is this finding of Mr. Dalziel which is now under consideration and will be referred to as the judgment of the Judicial Commissioner. He has held that the pradhanis in six out of the ten cases were liable to be sold. This finding was not questioned by the appellants of those cases and, therefore, those six appeals (M. A. nos. 77 to 82 of 1935) were dismissed by our order, dated the 20th of April, 1936. In the four cases, which are now before us, the finding of the learned Judicial Commissioner is that they are not saleable. The respondent has filed objections against

1936.

DEBNATH MAHATA
v.
JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

this finding, and we have to determine whether the view taken by the learned Judicial Commissioner is correct.

'Pradhan' under the Chota Nagpur Tenancy Act comes within the definition of 'village-headman' which means the headman of a village or of a group of villages, whether known as manki, or pradhan, or manjhi, or otherwise, or by an equivocal designation, such as, thicadar or ijaradar. Section 127(1) of the Act authorizes the local Government to make an order directing that a record be prepared by a Revenue officer of the rights and obligations in any specified local area of—

(*b*) village-headmen.

Then there is an explanation to this section which runs thus:—

"The word 'rights' as used in this sub-section, includes the right of a village headman to hold his office, as well as his right to hold land."

In clause (*b*) the word 'village-headman' was substituted for the words "headmen of villages or groups of villages, whether known as mankis, or pradhans or manjhis or otherwise" by section 35 of Act VI of 1920 (B. & O.) in consequence of the amendment of the definition of 'village-headman' by which all the words, which were substituted by the word 'village-headman', were included in the definition itself. In all these cases record-of-rights of the village-headman have been prepared under the orders of the local Government and are known as *satwalipis* and are on the records of these appeals. These records are conclusive evidence under section 132 of the Chota Nagpur Tenancy Act. We have, therefore, to ascertain from the *satwalipis* the rights of the appellants in their tenancies to which an office is attached and then to decide whether these rights can be sold consistently with the Chota Nagpur Tenancy Act and, if not, whether they are saleable under any established custom.

1936.

DEBNATH MAHATA v. JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

The arguments of Mr. Das, who has appeared on behalf of the respondent in support of the decision of Mr. Najabat Hossain and to contest the findings of Mr. Dalziel may be summarized thus. The decrees obtained by the respondent are decrees for rents against the tenure-holders. By their position in the Act and under the decrees themselves, which are for rent, the pradhans are tenure-holders, as they are persons who have acquired from the proprietor a right to hold land for the purposes of cultivating it or bringing it under cultivation by establishing tenants thereon. Under section 60 of the Chota Nagpur Tenancy Act the rent of a tenancy is a first charge on the tenancy. Under section 208 of the Act

> "when a decree is passed by the Deputy Commissioner for arrears of rent in respect of a tenure or holding, the decree-holder may apply for the sale of such tenure or holding, and the tenure or holding may thereupon be brought to sale, in execution of the decree, according to the provisions for the sale of under-tenures contained in the Bengal Rent Recovery Act of 1865, etc., etc."

Therefore, the landlord, has a statutory right to bring the tenures of the tenure-holders to sale in execution of a rent decree and there being no provision in the Act restricting this right in the case of a pradhani the statutory provisions must prevail. There is no such restriction in the Act. It is, therefore, for the appellants to show that by any local custom or by any other provision of law the pradhanis are not saleable. This argument has its force and seems to have appealed to the learned Judicial Commissioner, Mr. Najabat Hossain, but it ignores the fact that though the pradhans are a sort of tenure-holders and come within that class under some provisions of the Chota Nagpur Tenancy Act, their treatment in the Act and their rights as recorded in the *satwalipis* show that they are not tenure-holders pure and simple but are something more and form a distinct class by themselves. A separate record-of-rights is to be prepared for them under Chapter XV of the Chota Nagpur Tenancy Act. These records (unlike other records-of-rights prepared under Chapter XII of the

Chota Nagpur Tenancy Act, which are presumed to be correct) are conclusive evidence. In sections 9A, 51A and 74 and some other sections of the Act the village-headman is separately mentioned. In the case of *The Tata Iron and Steel Company, Limited* v. *Raghunath Mahto*(1), a Bench of this Court held that the interest of a village-headman does not come strictly within the definition of the tenure-holder as given in the Chota Nagpur Tenancy Act. All this leads me to the conclusion that we cannot decide about the salability of the interest of the village-headman purely on the *a priori* reasons advanced by the learned Advocate for the respondent.

The *satwalipis* of the four appellants are almost similar. I take the typical one, that is, of Debendra Nath Mahton, the appellant in appeal no. 48 of 1935. The record has been prepared in the name of his predecessor Hirday Nath Mahton. A separate khewat no. 3 has been prepared for him with an area of 365 bighas. All this is cultivated. The remaining area of the village, which is jungle and uncultivated, has been recorded in the names of the landlords and the intermediate tenure-holders. This appellant, as is the case with the other appellants, has been holding under the pattas granted by the proprietor. These pattas will, however, under the provisions of section 74 of the Act make no change in the status of the appellants, that is to say, their status will remain the same which was before the grant of the pattas. Section 74 runs thus:—

"When a tenure-holder, village-headman or raiyat has been in occupation of a tenure or holding, and a lease is executed with a view to the continuance of such occupation, he shall not be deemed to be admitted to occupation by that lease, notwithstanding that the lease may purport to admit him to occupation."

The record-of-rights, which I have said is conclusive, says that on the expiry of the term at the time of the fresh settlement the rate of rent would be fixed either amicably, by panchayat or in accordance with

(1) (1918) 45 Ind. Cas. 72.

1936.

DEBNATH MAHATA v. JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

law, showing that the fixing of rent is not in the discretion of the landlord. There is a provision that if a pradhan refuses to take settlement it can be made with others. There is no provision for the landlord to hold the village khas as is the provision in some other *satwalipis* on the record. This indicates that though an individual pradhan may cease to hold the tenancy, the tenancy itself cannot be brought to an end. There are in the *satwalipi* rights recorded in favour of the raiyats of the village, who have been recorded to be entitled to bring into cultivation the jungle lands of the village without the permission of the landlord or of the pradhan. This entry shows that the raiyats' rights are not confined to the cultivated area recorded in the name of the pradhan, but extend beyond that area. When the tenants do bring the new lands under cultivation they are not to pay any rent for five years and then at half the rate till fresh settlement. This rent is to be paid not to the proprietor but to the pradhan, who is to enjoy it till then. This shows that the right of a pradhan is not confined to his tenure only but extends beyond it, that is, his pradhani right goes on extending as the villagers extend the cultivation.

The next right recorded is that a pradhan has no right to transfer, nor is the pradhani liable to be divided. These are the incidents of the tenancies which are involved in the present appeals. It has been contended on behalf of the respondent that all these rights are the creation of a contract, but the rights are peculiar and, though they are embodied in the pattas which had been granted to the pradhans from time to time, the nature of the rights clearly indicates that the pattas simply embodied the rights of the pradhans which have been coming from a long time. Other *satwalipis* are as I have said similar. In none of them there is any mention of the right of the landlord to sell the pradhani on non-payment of rent; rather it is clearly mentioned that a pradhan is liable to be ejected for default in payment of rent.

Mr. Reid in his Settlement Report of Dhalbhum from where these cases come, while dealing with the origin and development of village-headmanship gives an account of the system of reclamation in that locality and describes the position of a village-headman. He says:

"Headmen are locally known as pradhans, manjhis, mandals, ijaradars and thicadars.. The original pioneers and their descendants through the male line are the khuntkattidars of the village. The later comers, the members of their families, and the descendants of the khuntkattidars in the female line are the ordinary raiyats."

Then he proceeds:—

"The headman is the representative of the village community in all its external relations: but he is also a chief resident raiyat. He is in fact a tenure-holder or landlord, a village official, and a raiyat ....; as a village official, he is responsible for the supply of *rasad* and transport to troops and officials on tour; he is bound to prevent bad characters from settling in the village, to report offences at the thana, and to see to the repair of the tanks and bandhs, the preservation of the jungle, and to guard against waste......... ....

The jama (rent) payable by the headman is ordinarily not enhanceable during the period of his lease. He has generally a preferential right to a resettlement on the expiry of the term. The rents of the tenants may be increased or enhanced according to law, and, if the headman refuses to take settlement after the expiry of the term of his lease at fair and equitable rates, the settlement may be made with a third person, or the village may be held khas by the landlord. The latter, however, can only eject the headman through the Court, etc., etc. The Deputy Commissioner will, of course, decide whether the rates demanded are fair and equitable or not."

The option of the landlord, on the refusal of a pradhan to take a settlement, to make a settlement with another man or to hold khas is not, in my opinion, in every case. I find from the *satwalipis* of these four cases that the right to hold khas has not been mentioned in them; while, as I have said, in some other cases, which we have disposed of, the *satwalipis* do record the right to hold khas; for instance, the *satwalipi* of village Nekradungri which was the subject-matter of Miscellaneous Appeal no.

1936.

DEBNATH MAHATA v. JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

77 of 1935, where the pradhan had no right of resettlement.

According to Mr. Reid, the pradhans are of three classes: (*1*) khuntkatti pradhans, (*2*) non-khuntkatti pradhans with heritable rights and (*3*) non-khuntkatti pradhans with non-heritable rights. Unfortunately the *satwalipis* do not mention the class to which the pradhans in these cases belong. There is no doubt that they do not belong to the third class, as the record-of-rights clearly shows the pradhanis to be heritable. They are more probably of the second class, the original pradhans having been substituted by new comers. Be that as it may, the right is independent of the pradhan being a khuntkattidar as long as the incidents of the tenancy are the same. Cases may happen in which a pradhan is removed, and in his place another man is appointed, but the new man will be clothed with all the rights and liabilities of his predecessor and will hold the tenancy with all the incidents appertaining to it. He will not become a tenant of a different class altogether.

My conclusions, therefore, are that though the pradhans are tenure-holders in their relations to the superior landlord, they are also his permanent agents for certain purposes, as for instance, for the supply of *rasad*, etc. They are landlords of the raiyats of the village and also their headmen and holders of an office and are in this capacity their representatives. The raiyats are vitally interested in having a pradhan who should be their headman according to the prevailing custom. This right of the raiyats to have a pradhan intervening between them and the superior landlord was recognized by the legislature in section 74A of the Chota Nagpur Tenancy Act, a section which was added in 1920. This section authorises any three or more tenants of the village to have a pradhan appointed by the Deputy Commissioner in case there is a vacancy and this they can do

1936.

DEBNATH MAHATA v. JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

even if there is a pradhan appointed by the landlord. This right of the raiyats clearly shows that the pradhans cannot be changed at the instance of the landlord only. A right in which third persons are interested cannot, therefore, be sold behind their back. The position will become anomalous. For instance, if the landlord brings a pradhani to sale and purchases it himself he will be holding the village khas and thereby destroying the rights of the raiyats to have a pradhan and in that case I see no reason why under the express provisions of section 74A the tenants cannot have a pradhan appointed. The sale will, therefore, become infructuous. If, on the other hand, the pradhani is purchased by a third party, an absolute stranger, it will impose upon the tenants a headman who is not suited to be their headman according to the custom. In my opinion, therefore, section 74A makes it impossible for me to hold that pradhani rights are saleable. At one time Mr. Das contended that the effect of the sale of pradhanis in execution of rent decrees will be to bring the customary pradhani to an end and therefore section 74A will have no application. If this be the consequence, the result will be that the customary rights of the raiyats will be destroyed for no fault of theirs.

Mr. Mullick, who followed Mr. Das, contended that section 74A is applicable only to customary pradhanis, and not to the cases which are before us, as they are not customary pradhanis. He went to the length of contending that this section applies only to mundari khuntkattidars. It is enough to point out in answer to the last part of the contention that the mundari khuntkattidars are a class by themselves, and have been separately dealt with in Chapter XVIII of the Chota Nagpur Tenancy Act. The learned Judicial Commissioner (Mr. Dalziel) has found in each of these four cases that the pradhanis are old and I see no reason to differ from the view which he has taken.

1936.

DEBNATH MAHATA v. JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

It was contended that according to the quinquennial register, a copy of which was produced by the respondent, there were only 145 villages in Dhalbhum in 1788 and these villages were not then in existence and therefore the pradhans cannot be said to be customary pradhans. Now, it may be that these pradhanis were not in existence in 1788, but pradhani is the custom of the locality and when a new pradhani is formed and treated as the ancient pradhani, it will be governed by the same custom. The pattas granted by the respondent in these cases are in usual and customary terms.

The next question is whether the pradhanis are saleable by custom. No such custom has been established, and the learned Judicial Commissioner has pointed out that though there have been cases of sale but they are of recent dates. The practice of sale started when a commercial concern came in the estate and dates from 1906. These sales cannot establish a custom. Then custom can only be given effect to if it is not inconsistent with the provisions of the Act. In my opinion, salability is by necessary implication inconsistent with section 74A of the Act.

I have come to this conclusion not without much hesitation, as in my opinion our decision will certainly place a great impediment in the realisation of the rent by the landlord. There may be cases and in fact I believe there are cases in which a pradhan has no property of his own from which the rent can be realised. He may have collected rent from the raiyats and appropriated it to himself for three or four years, and then the landlord is practically without any adequate means to realise that rent. It has been suggested that the landlord can eject the pradhan under section 59 of the Chota Nagpur Tenancy Act. The *satwalipi* makes him liable for ejectment if he does not pay his rent regularly. But I think ejectment is not an adequate remedy in this case. If the pradhan is ejected, there will be a vacancy. There is no guarantee that some member of his family will

1936.

DEBNATH MAHATA v. JAGDISH CHANDRA DEO DHABAL DEB.

KHAJA MOHAMAD NOOR, J.

not be appointed by the Deputy Commissioner and the same trouble repeated. Apart from this a pradhan may be ejected, but the rent of the landlord is lost in case the pradhan has no property from which it can be realised. I would, therefore, invite the attention of the Government and the legislature to the situation which is likely to arise in consequence of our holding that the genuine pradhanis are not saleable, in the hope that more effective means may be devised for recovery of rent payable by the *pradhans* to the landlord. So far as the merits of the cases are concerned, I think the conclusion to which I have reached is the only possible conclusion on a consideration of the different provisions of the Act and of the *satwalipis* which are conclusive.

I would, therefore, allow these four appeals, set aside the order of the learned Judicial Commissioner (Mr. Najabat Husain) in these cases and restore that of the learned Deputy Collector, and hold that the *pradhanis* in these cases are not saleable. The appellants will be entitled to their costs in this Court as well as in the court of the Judicial Commissioner. The costs, which have been incurred in all the ten appeals jointly, will be apportioned according to the value of the appeals in each case.

SAUNDERS, J.—I agree.

Appeals allowed.

REVISIONAL CRIMINAL.

Before James and Verma, JJ.

1936.

April, 28, 29.

KHAJA ABDUL GHANI

v.

KING-EMPEROR*

Bengal Ferries Act, 1885 (*Act* 1 *of* 1885), *sections* 16 *and* 28—*lessor of ferry whether responsible for carrying passengers in contravention of the provisions of section* 16 *of the Act.*

* Criminal Revision no. 100 of 1936, against an order of A. Mukherjee, Esq., I.C.S., Sessions Judge of Purnea, dated the 23rd January, 1936, confirming the order of Babu Ram Janam Singh, Magistrate, First Class, Kishengunj, dated the 25th of November, 1935.