

1935.

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assessed lies on him and he has failed to discharge that onus to the satisfaction of the court of fact below. The statutory presumption in favour of the defendants, therefore, remains unrebutted with the result that the appeal must be dismissed with costs.

Appeal dismissed.

VARMA, J.—I agree.

AGARWALA,
J.

PRIVY COUNCIL.

K. C. MUKERJEE

v.

MUSAMMAT RAM RATAN KUER—

J.C.*
1935.
November,
11.

On Appeal from the High Court at Patna.

Bihar Tenancy Amendment Act, 1934 (VIII of 1934), section 10—Bihar Tenancy Act (VIII of 1885), sections 26 N and 26 O—Pending suits—Effect of amendment.

Sections 26 (N) and 26 (O) of the Bihar Tenancy Act, 1885, are expressed and intended to have retrospective action. There being no saving clause, they are applicable to pending suits.

Appeal (no. 68 of 1934) from a decree of the High Court (April 27, 1933) reversing a decree of the First Additional Subordinate Judge at Patna (January 20, 1930).

The facts are stated in the judgment of their Lordships of the Judicial Committee.

1935, October 28. *DeGruyther K. C.* and *Parikh* for the appellant.

The respondents were not represented.

* PRESENT: Lord Thankerton, Sir John Wallis and Sir George Rankin.

The judgment of their Lordships was delivered by—

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SIR GEORGE RANKIN.—This appeal has been heard *ex parte* there being no appearance on behalf of any respondent.

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Their Lordships are much indebted to Mr. De Gruyther for the care and candour with which he has explained the considerations arising upon the appeal.

This suit was brought on the 30th June, 1927, by the Official Receiver of the High Court at Calcutta who represents the landlord's interest in a village called Majhauri. The first defendant Musammat Ramratan Kuer was sued on the footing that she had taken a transfer of a non-transferable occupancy holding in this village by deed, dated the 28th September, 1916. The case made against her was that the transfer of the holding attracted certain principles of law laid down in the well-known case of *Dayamayi v. Ananda Mohan Roy Chowdhury*(1) and that the landlord was entitled to re-enter upon the holding as upon an abandonment by the tenant. The deed of the 28th September, 1916, purported to be a relinquishment by one Ram Kishen and the heirs of one Ganpat of the tenancy right including the right of occupancy of defendant no. 1 who was the widow of Bansidhar Singh. The purport of the deed was that Ram Kishen and Ganpat had become entitled to the tenancy right as benamidars for defendant no. 1 and not otherwise. The plaintiff's case on the other hand was that defendant no. 1 had, prior to the deed, no interest in the tenancy, and that the deed accordingly was in reality a transfer for a non-transferable occupancy holding.

The Subordinate Judge accepted the plaintiff's case and made a decree ejecting defendant no. 1. On appeal to the High Court at Patna, however, the

(1) (1914) I. L. R. 42 Cal. 172, F. B.

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learned Judges were of opinion that since the date of the deed in question the plaintiff or his predecessors had recognised the right of the transferee and could not now impugn the transfer. This question depends upon the effect to be given in law to certain rent receipts. The case which the appellant desired to submit to the Board in this appeal is that these rent receipts were given by the patwari and cannot be imputed to him as a recognition of the transfer even if it be held that they bound his ijaradar.

The decree of the Subordinate Judge was dated 20th January, 1930. On appeal the High Court dismissed the suit on the 27th April, 1933. Pending the appeal to His Majesty in Council the legislature of Bihar and Orissa passed an Act called the Bihar Tenancy Amendment Act, 1934. The assent of the Governor General to this Act was dated the 24th November, 1934, and by section 1(2) the Act was expressed to come into force on such date as the Local Government might by notification appoint. The date fixed by the Local Government for the commencement of the operation of the Act was the 10th June, 1935. The first question to which their Lordships have to address themselves is the question whether this Act does not take away from the appellant the right which he is proposing to enforce by bringing this appeal to His Majesty in Council.

By section 10 of the Act certain sections are inserted into the Bengal Tenancy Act of 1885 so far as regards its application to Bihar and Orissa. By new sections numbered 26 (A) to 26 (M) provision is made whereby an occupancy raiyat is given power to transfer his occupancy-holding. This new right is made subject to the payment of a transfer fee to the landlord, the fee being paid either to the landlord direct or to the Collector for the landlord's benefit. In addition to these provisions which are to take effect in the future, there are two sections 26 (N) and 26 (O) expressed and intended to have retrospective action.

Section 26 (N) directly governs the present case and is as follows:—

“ Every person claiming an interest as landlord in any holding or portion thereof shall be deemed to have given his consent to every transfer of such holding or portion by sale, exchange, gift or will made before the first day of January, 1923, and, in the case of the transfer of a portion of a holding, to have accepted the distribution of the rent of the holding as stated in the instrument of transfer, or if there is no such instrument, as settled between the transferor and the transferee.”

Section 26 (O) provides that in the case of a transfer made on or after the 1st day of January, 1923, but before the date of the commencement of the Act, the transferee may pay to the landlord or deposit with the Collector a transfer fee as therein particularised, and that upon his complying with this condition the consent of every person claiming an interest as landlord in the holding, or portion transferred shall be deemed to have been given to the transfer. The Act contains no saving clause modifying the effect of sections 26 (N) and 26(O).

In these circumstances it appears to their Lordships that unless some saving can be implied as regards occupancy-holdings which at the date of the commencement of the Act are in question in a pending suit, section 26 (N) must be applied to the present case and the plaintiff's appeal must fail *in limine*. Their Lordships are of opinion that no such saving can be implied. Section 26 (N) is not a provision to the effect that no action shall lie in certain circumstances, nor has it any reference directly to litigation. Its provision is that every person claiming an interest as a landlord shall be deemed to have given his consent to every transfer made before the 1st January, 1923. This is retrospective: the question is not whether general language shall be taken only in a prospective sense. The object of this section can only be to quiet titles which are more than ten years old, and to ensure that if during those ten years the transferee has not been ejected he shall have the right to remain on the land. Within this class the legislature has not thought fit to discriminate against tenants whose right is under challenge in a suit, a course which it may

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well have regarded as invidious or unnecessary. As substantive rights of landlords and their accrued causes of action were to be abrogated, respect for pending suits over old transfers cannot be assumed.

Again, if section 26 (O) be looked at, it will be seen that in the case of a transfer made after the 1st January, 1923, but before 10th June, 1935, the provision is that the transferee may pay or deposit the landlord's transfer fee and thus perfect his title. There is no suggestion that a transferee shall be incompetent to make the payment, or that the Collector shall refuse to receive the money in any case in which the transfer is impugned in a pending suit. If the saving to be implied in favour of pending suits is to attach to all suits brought prior to the coming into force of the Act, then the interval between the passing of the Act in November, 1934, and the coming into force of the Act in June, 1935, gave opportunity to any landlord to bring an ejectment suit and defeat the rights conferred by sections 26 (N) and 26 (O).

In their Lordships' opinion it is reasonably plain that no such saving can be implied. On this view the present appeal fails and should be dismissed. As the respondents have not appeared there will be no order as to costs.

Their Lordships will humbly advise His Majesty accordingly.

Solicitors for the appellants—*Downer and Lewis.*

APPELLATE CIVIL.

Before Macpherson and Khaja Mohamad Noor, JJ.

NANAK PRASAD SAHU

v.

MUSAMMAT KASEDA KUMRI.*

1935.

November,
13.

Revenue Sales Act, 1859 (Act XI of 1859), sections 2, 3 and 33—"kist", meaning of—kistbandi dates in Bihar,

* Appeal from Appellate Decree no. 1268 of 1931, from a decision of D. P. Sinha Sharma, Esq., I.C.S., Additional District Judge of Monghyr, dated the 13th June, 1931, reversing a decision of Babu Braj Bilas Prasad, Munsif of Begusarai, dated the 22nd August, 1929.