

Karmali Bahimbhai (1) in which the observations of the Court appear to support the view taken above:

For these reasons we are of opinion that the bequest to the plaintiff's father is valid. We accordingly dismiss this appeal with costs.

Appeal dismissed.

32 C. 1014 (=2 C. L. J. 77.)

[1014] APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Mookerjee.

DARBARI PANJIARA v. BENI RAI.*

[30th May, 1905.]

Mulraiyat—Incidents of a mulraiyati tenure—Right to split up such a tenure—Suit for ejectment by a Mustagir.

A *mulraiyat* is a village headman or settlement holder, whose rights are in their entirety transferable and attachable.

The privilege, which the *mulraiyat* possesses of transferring his tenure must be exercised in respect of the whole tenure at the same time: in other words, if he chooses to transfer his tenure, he must alienate the whole of his rights in the village, including his right of managing the village and collecting the rent as also his right to the land in his possession.

He cannot split up the tenure so as to part with a portion and retain the remainder.

Therefore a person, who purchases only a portion of the tenure, acquires no right as *mulraiyat* and is liable to be evicted by the *mustagir* of the village in the absence of a finding that he has a right as an ordinary raiyat.

SECOND APPEAL by the plaintiff, Darbari Panjiara.

This appeal arose out of an action brought by the plaintiff to recover possession of a share of a mouza in the sub-division of Deoghur on establishment of a *mustagiri* right thereto.

The allegation of the plaintiff was that the disputed village was originally *mulraiyati* held jointly, by five shareholders, who though recorded as joint-holders in the settlement proceedings, held separate possession of the lands in proportion to their shares; that one of the shareholders abandoned his lands, and two others transferred their rights to defendants, first party; and that he (the plaintiff) and the defendants, second party, as heirs of the other remaining shareholders were in possession of the lands belonging to them. The plaintiff further alleged that in 1896 he, as also the defendants [1015] second party, relinquished their *mulraiyati* right and took a settlement of the village as *mustagirs*. Upon these allegations this suit was brought by the plaintiff for a declaration that the defendants, first party, did not acquire any valid title by their purchase, and he asked for a decree for recovery of possession jointly with the defendants, second party. The defence *inter alia* was that the plaintiff as a *mustagir* had acquired no right to the *nijjote* lands of the village and as such he was not entitled to a decree.

The Court of first instance dismissed the plaintiff's suit.

On appeal the learned Deputy Commissioner held that the defendants first party acquired no title by their purchase and that the plaintiff and the defendants, second party, as *mustagirs* were only entitled to collect

*Appeal from Appellate Decree No. 2616 of 1902, against the decree of the Deputy Commissioner of Naya Dumka, dated 16th September 1902, modifying that of the Subordinate Judge of Deoghur, dated 30th June 1902.

(1) (1908) I. L. R. 29 Bom. 133.

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rents from the said defendants, and passed a decree making a declaration to that effect.

Against this decision the plaintiff appealed to the High Court.

Babu Surendra Nath Ghosal for the appellant.

Babu Dwarka Nath Chuckerburty and Babu Sarat Chunder Basak for the respondent.

Cur. adv. vult.

STEPHEN AND MOOKERJEE, JJ.—This is an appeal on behalf of the plaintiff in an action commenced by him for recovery of possession of a 7 annas share of mouza Kharahara in the sub-division of Deoghur in *mustagiri* right. The plaintiff alleges that the village in question was originally *mulraiyati*, held jointly by five shareholders who, though recorded as joint-holders in the settlement proceedings, held separate possession of the lands proportionate to their shares; that one of these shareholders abandoned his lands; that a portion of the lands belonging to two others has been acquired by transfer by the defendants, first party, and that the plaintiff and the defendants, second party, are the heirs of the other two shareholders and in possession of the lands belonging to them. The plaintiff further alleges that in 1896 he as well as the defendants, second party, relinquished their *mulraiyati* right and took a settlement of the village as *mustagirs*. He now seeks for a declaration that the defendants, first party, have not acquired any valid title to a seven annas share of the village [1016] by their purchase, and he asks for a decree for recovery of possession of this share jointly with the defendants, second party. The defendants, first party, resisted the claim on the ground, among others that the plaintiff as a *mustagir* had acquired no right to the *nijjote* lands of the village. The Court of first instance dismissed the suit on the ground that the plaintiff has no cause of action against the defendants. Upon appeal the learned Deputy Commissioner has held that the defendants, first party, had not acquired a valid title by their purchase, but that the plaintiff as *mustagir* was entitled to nothing beyond possession by receipt of rent: he has accordingly given a decree for possession of the village to the plaintiff and the defendants, second party, but limited with the declaration that they have the right to collect rent from it. The plaintiff has appealed to this Court, and on his behalf it has been contended that as the defendants first party, have been found to be trespassers, the plaintiff is entitled to a decree for ejectment, the solution of the question raised depends upon the incidents of a *mulraiyati* lease and a *mustagiri* lease, which must first be determined.

The position of a *mulraiyat* has been examined fully by Mr. Heard in his treatise on *Charwali* and *Mulraiyati* tenures. It appears that the *mulraiyat* is a village headman or settlement-holder, whose rights are in their entirety transferable, saleable and attachable.

These rights are

(1) to enjoy rent-free *man* land, that is service land, if any, of the village official,

(2) to collect commission on rents from landlord and raiyats,

(3) to enjoy his *nijjote* lands at the same rates of rent as apply to other raiyats, or to lease them out at settlement rates, in which latter event they cease to be *nijjote* lands, and

(4) to assess at half rates all waste and jungle lands reclaimed by the raiyats, or to enjoy rent-free what he himself reclaims.

It is well settled that the privilege which the *mulraiyat* possesses of transferring his tenure must be exercised in respect of the whole tenure at the same time : in other words, if he chooses to transfer his tenure, he must alienate the whole of [1017] his rights in the village, including his right of managing the village and collecting the rent, as also his right to the land in his possession. He cannot split up the tenure so as to part with a portion and retain the remainder. Now in the case before us the defendants, first party, have not purchased the entire interest of either of two of the original *mulraiyats* in a single transaction ; by purchase of fractions of such interest, they have manifestly acquired no title, nor have they acquired any title to the lands of the *mulraiyat*, who absconded and abandoned his tenure. The finding of the Deputy Commissioner that the defendants, first party, have not acquired the status of *mulraiyats* must, therefore, be sustained.

Next, as to the position of the plaintiff ; he was originally a *mulraiyat* ; he was entitled voluntarily to give up his special right of alienation ; this he did in 1896, and accepted settlement as a *mustagir*.

His rights as such *mustagir* or headmen are

(1) to reclaim and cultivate the waste lands in the village without paying rent or to settle such lands at half rates with the other raiyats (the half rates going into the headman's own pocket),

(2) to hold at his option in his own possession, or to settle with others, the jotes of absconded raiyats, and

(3) to receive a fixed commission on the rent collections from the raiyats and an equal sum from the *ghatwal* or zamindar, the headman's *nijjote* lands being assessed with rent like the other lands of the village (see the form of the lease given on page 94 of the Sonthal Pergannahs Laws Manual, 1898).

It is, therefore, not quite accurate to say that the right of the *mustagir* is absolutely restricted to the collection of rent from ordinary raiyats. It follows consequently that, if the defendants, first party, have not acquired any rights as *mulraiyats*, and if they have no rights as ordinary raiyats, they are not entitled to interfere with the possession of the plaintiff, and must be evicted. There is no finding, however, by either of the Courts below upon the question of their raiyati right, if any.

The result therefore is that this appeal must be allowed, and the decree of the Deputy Commissioner modified. The title of the plaintiff as *mustagir* will be declared, and he will recover [1018] possession as such, of a seven annas share of the village to be held jointly with the defendants, second party ; the defendants, first party, must be rejected from all lands in which they are not shown to have acquired a valid raiyati right before the institution of this suit ; the case must be remitted to the Court below to determine in which lands, if any, the defendants, first party, had such raiyati right. We make no order as to costs in this Court.

Appeal allowed ; case remanded.

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