

Privy Council Appeal No. 22 of 1921.

Patna Appeal No. 79 of 1917.

Damodar Narayan Chaudhury and others - - - *Appellants*

v.

S. A. Miller and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH MAY, 1922.

Present at the Hearing :

LORD PHILLIMORE.

LORD CARSON.

SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal by the plaintiffs from a decree, dated the 26th June, 1917, of the High Court at Patna, which affirmed a decree, dated the 6th July, 1914, of the Subordinate Judge of Darbhanga, which had dismissed the suit.

The plaintiffs are proprietors of lands in Mouza Bullipur, Pursuram, in the district of Darbhanga, which bear the Touzi numbers 2864, 10807, 10808 and 10809, and the suit was brought on the 20th February, 1912, in the Court of the Subordinate Judge of Darbhanga to eject the defendants, S. A. Miller and Mrs. E. G. Coventry, from those lands on the ground that they were trespassers, and a decree for mesne profits as against them was claimed. S. A. Miller and Mrs. E. G. Coventry are respondents to this appeal. E. Dalgleish and W. H. Dalgleish were also defendants to the suit, but they had ceased to be interested in the lands in question in 1911, and no relief as against

them was claimed, and they are not parties to this appeal. Bernard Coventry, who claimed to be interested in the lands in question under a conveyance of the 26th July, 1918, from S. A. Miller, was, on his own application to the High Court at Patna, added as a respondent to this appeal.

The defences of S. A. Miller and Mrs. E. G. Coventry to the suit, so far as they need be referred to, were that H. B. Dalgleish had in his lifetime a right of occupancy in the lands in question, which, being lands held by a proprietor of an indigo factory, for the purposes of the factory, were by a local custom transferable with the right of occupancy to a stranger without the consent of the proprietor of such raiyati lands; and that E. Dalgleish, as the administrator of H. B. Dalgleish, had on the 1st March, 1909, by a conveyance transferred the lands and that right of occupancy to them. They further alleged that the plaintiffs were estopped from denying that they held the lands as the tenants of the plaintiffs and with a right of occupancy in them. It is not necessary now to consider the defence based on the alleged custom, as there are concurrent findings of the Courts below that the alleged custom was not proved.

The facts upon which the defence of estoppel depends are as follows:—The plaintiffs, or those whom they represent, let the lands in question to H. B. Dalgleish, the then proprietor of the Bandhar Indigo Factory, for a term of years, which expired in 1901. On the 30th November, 1901, after the said term had determined, the plaintiffs, or those whom they represent, brought a suit against H. B. Dalgleish and others for possession of the lands in question. The Subordinate Judge who tried that suit gave, on the 18th September, 1903, the plaintiffs a decree for possession; from that decree H. B. Dalgleish appealed to the High Court at Calcutta. The High Court at Calcutta came to the conclusion that H. B. Dalgleish was a raiyat of the lands in question and as a raiyat was, under the Bengal Tenancy Act, 1885, entitled to a notice to quit, and as no notice to quit had been given to him the High Court, on the 17th May, 1905, allowed the appeal and by its decree dismissed the suit. From that decree the plaintiffs, on the 5th March, 1907, appealed to His Majesty in Council. During the pendency of that appeal H. B. Dalgleish died on the 15th September, 1907. On the 1st March, 1909, Edward Dalgleish, as the administrator of H. B. Dalgleish, sold to S. A. Miller and Mrs. E. G. Coventry such interest as H. B. Dalgleish had in the lands in question, and on the 11th March, 1909, the administrator served upon the plaintiffs a notice of such sale. Thereupon, on the 26th April, 1909, the plaintiffs presented to the High Court at Calcutta a petition stating that notice of such sale had been served upon them, and that though they did not admit the validity of such sale, they were advised that S. A. Miller and “Mr. E. G. Caruling” (Mrs. E. G. Coventry) should be added as respondents to the appeal to His Majesty in Council, and they prayed that they should be added. In accordance with that petition S. A. Miller

and Mrs. E. G. Coventry were added as respondents to that appeal. On the 1st February, 1911, the Board, by their judgment, advised His Majesty, so far as the appeal related to the lands now in question, that in their opinion the learned Judges of the High Court had correctly apprehended the law applicable to the matter, and their Lordships saw no ground for doubting the soundness of the conclusion of fact arrived at by the learned Judges to the effect that the larger area (the lands now in question) was not the proprietors' private land, with the consequence that there was nothing in Section 116 of the Bengal Tenancy Act, 1885, to preclude the acquisition by H. B. Dalgleish of occupancy rights, and that such rights had accordingly been acquired, and further advised that the appeal so far as it related to the lands now in question should be dismissed.

The Subordinate Judge who tried this suit being of opinion that the plaintiffs, not having asserted in the petition of the 26th April, 1909, that S. A. Miller and Mrs. E. G. Coventry had acquired no title to the lands in question, by the transfer to them by E. Dalgleish of the 1st March, 1909, had by filing that petition admitted that S. A. Miller and Mrs. E. G. Coventry had succeeded to the interest of H. B. Dalgleish as an occupancy raiyat and were estopped from asserting that S. A. Miller and Mrs. E. G. Coventry had not any right to the lands and were trespassers, and by his decree of the 8th July, 1914, dismissed the suit of the plaintiffs.

From that decree of the Subordinate Judge the plaintiffs appealed to the High Court at Calcutta. That appeal came on to be heard by the High Court at Patna. Mr. Justice Roe after considering the petition of the 26th April, 1909, and two other petitions, which that learned Judge apparently was unaware had no relation to the lands in question, concluded that the effect of the three petitions read together was a recognition by the plaintiffs of a tenancy in the lands in question "acquired by Miller and Mrs. Coventry from the Dalgleish defendants," and was a recognition by plaintiffs of an occupancy right in S. A. Miller and Mrs. E. G. Coventry. Mr. Justice Roe did not explain how the right of occupancy which H. B. Dalgleish had in the lands in question had vested in the administrator and W. H. Dalgleish, or how, if that right had vested in them, they could have transferred it to strangers without the consent of the proprietors of the lands. Mr. Justice Mullick considered that the petition of the 26th April, 1909, was a clear representation by the plaintiffs to S. A. Miller and Mrs. E. G. Coventry that the transfers of the 1st March, 1909, were recognised by the plaintiffs and that on the faith of that representation S. A. Miller and Mrs. E. G. Coventry changed their position by rendering themselves liable for the costs of the litigation. The High Court at Patna by its decree of the 26th June, 1917, dismissed the appeal of the plaintiffs. From that decree this appeal to His Majesty in Council has been brought.

Their Lordships are unable to find anything, even remotely, of the nature of an estoppel in this case. The plaintiffs neither

in the petition of the 26th April, 1909, nor in the presenting of it, made any representation that S. A. Miller and Mrs. E. G. Coventry had acquired any title to the lands in question or were tenants of those lands either with or without a right of occupancy. The position of the plaintiffs then was and still is that S. A. Miller and Mrs. E. G. Coventry were trespassers without any title to the possession of, or interest in, the lands in question. The plaintiffs, having had notice of the transfers from the administrator of H. B. Dalgleish, prudently took the precaution of applying to have S. A. Miller and Mrs. E. G. Coventry added as respondents, so that they might in their appeal defend the interests, if any, which they had in the lands in question. They were obviously added with the object of further litigation after the determination of that appeal to His Majesty in Council being, if possible, avoided. S. A. Miller and Mrs. E. G. Coventry in their own interest accepted the position of added respondents to the appeal and did not disclaim all interest in the litigation and in the lands in question.

Their Lordships will humbly advise His Majesty that this appeal should be allowed with costs; that the decree of the Subordinate Judge and of the High Court at Patna should be set aside with costs in each Court, and that the claims of the plaintiffs to a decree for possession and for mesne profits should be granted, the mesne profits to be ascertained by the High Court, or by the Court of the Subordinate Judge, as the High Court may direct.

In the Privy Council.

DAMODAR NARAYAN CHAUDHURY AND
OTHERS

B.

S. A. MILLER AND OTHERS.

DELIVERED BY SIR JOHN EDGE.

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