

Ali Hammad and ors. Vs. Jagardeo Singh

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Court : Allahabad

Decided On : Jan-10-1918

Reported in : (1918)ILR40All300

Judge : Piggott and ;Walsh, JJ.

Appellant : Ali Hammad and ors.

Respondent : Jagardeo Singh

Judgement :

Piggott, J.

1. These are four connected appeals which have come before us under the following circumstances:

The plaintiffs instituted, in the court of the Assistant Collector, Azamgarh, four suits, for the ejectment of the defendant from certain specified plots of land, in each case with the allegation that they themselves were mortgagees in possession of the proprietary rights over the said plots, and the defendant was a non-occupancy tenant of the same. The defendant replied that there was no contract of tenancy between himself and the plaintiffs; that his possession was proprietary in its nature and that he was in possession as of right, because he was a co-sharer in the proprietary rights of the particular sub-division of a mahal to which the land in suit appertained. On this the learned Assistant Collector took

action under Section 199 of Act II of 1901, requiring the defendant to file a suit in, the Civil Court for the determination of the question of title in issue between himself and the plaintiffs. The court of first instance determined the question in favour of the present defendant, who was, of course, the plaintiff in the Civil Court. On appeal, however, this decision was reversed. The controversy in this case has been very largely as to the meaning and effect of the appellate court's decision in this litigation. The decision, fairly considered, amounts to this, that the plaintiffs respondents (the defendants in the Civil Court) held a usufructuary mortgage in respect of the plots of land in suit and were entitled to the exclusive possession of the same as such mortgagees; but the present defendant had acquired a share in the proprietary rights, that is to say, in the equity of redemption, in respect of the mortgage held by the opposite party. The case came again before the Assistant Collector, who was bound to dispose of the ejectment suit then pending before him in accordance with the final decision of the Civil Court. He passed a brief order to the effect that in view of the decision of the Civil Court, the defendant could only be regarded as in possession of the land in suit as a subtenant, that is to say, a non-occupancy tenant (the land in question being sir land) from the plaintiffs. He ordered the defendant to be ejected accordingly. The defendant filed an appeal in the Commissioner's court, who refused to entertain it, holding that a question of proprietary title was still in issue as between the parties. The defendant then went before the District Judge in appeal, who dismissed the appeal, holding that the question of proprietary title, originally in issue, had been finally and completely disposed of in the suit already referred to, and that there was no question left for determination in the case which was not exclusively cognizable by the Revenue Courts. Against this decision four second appeals have been filed. When the case originally came up for hearing, the facts were not as clear as they are now, and an order was passed directing the District Judge to entertain the defendant's appeal and to determine certain issues of fact.

2. We have now before us the findings arrived at by the District Judge on the issues remanded, and as a matter of fact his findings proceed on admissions made by the parties. The mortgage under which the present plaintiffs respondents now hold, and have been holding since 1902, was a mortgage of the specific plots of sir land which are now in suit. The mortgage itself had been contracted prior to

the passing of the present Tenancy Act; so no question of ex-proprietary rights arises. On the terms of the mortgage, the plaintiffs, as transferees of the mortgagee rights, were entitled from 1902 and onwards to actual possession and enjoyment in respect of the land in suit.

3. The defendant, having acquired a part of the equity of redemption, asserted a right to take possession of some of the sir lands, without tendering the mortgage money. In prosecution of this claim he somehow succeeded in obtaining possession of the plots of land now in suit. The question specifically raised by these appeals is whether the learned District Judge was right or wrong in holding that no appeal lay to his court. I should be prepared to hold that that decision was correct, but the matter has now gone somewhat further. After the order of remand and the ascertainment of the facts, the real question before us is whether the Assistant Collector was right in ordering ejectment of the appellant. On the principles laid down by a learned Judge of this Court in *Balli v. Naubat Singh* (1912) 9 A. L. J., 771, the Assistant Collector was clearly right. It has been suggested, on the other side, that this decision was doubted in a Full Bench decision of this Court, in the later case of *Nandan Singh v. Ganga Prasad* (1913) I. L. R., 35 All., 513 (516) (See specially the remarks at page 516). As a matter of fact the decision reported in 9 A. L. J., page 771, was not specifically considered or in terms overruled, though it is open for the appellant to contend that the remarks of the learned Chief Justice, when delivering the judgement of the Full Bench suggest that he was not prepared to accept the correctness of that ruling. We find, however, that the principle laid down in *Balli v. Naubat Singh* (1) has been in substance accepted and followed by the Revenue Court since that decision was pronounced. Reference may be made to the notes by Mr. M. L. Agarwala in his valuable commentary on the N.-W. P. Tenancy Act, fifth edition, at pages 40 et seqq., of that edition. Moreover, there is a decision of the Board of Revenue, *Champa Kuar v. Pati Ram* (1915) 33 Indian Cases, 70 which deals with the position of a squatter occupying agricultural land for cultivating purposes, and which adopts the principle of the case of *Balli v. Naubat Singh* (1912) 9 A. L. J., 771 to its fullest extent. In this state of authorities I should be prepared personally to stand by the reported decisions directly bearing on the question before us. Moreover, I think that, there being nothing in favour of the defendant on the merits,

it is not incumbent on us to go out of one way to insist upon any legal technicalities for the sake of enabling the defendant to prolong this litigation. The decision in the case of Champa Kuar v. Pati Ram (1) is by the Senior Member of the present Board of Revenue; and it is quite clear that if the defendant had got what he asked for, namely, a re-consideration of the Assistant Collector's order by the higher Revenue Courts, the result would have been to affirm his ejectment.

4. So far as the Civil Courts are concerned they have already decided in favour of the plaintiffs respondents, and, if the present matter could rightly be taken cognizance of by the Civil Courts, they could not have come to a different decision from that arrived at by the Assistant Collector.

5. The defendant's possession is wholly unlawful, and the order of ejectment a proper order on the merits. There are thus abundant reasons for dismissing these appeals.

Walsh, J.

6. I agree. Particularly I accept the cases of Balli v. Naubat (2) and Champa Kuar v. Pati Ram (1) as the correct expression of the law, I am not satisfied that in Nandan Singh v. Ganga Prasad (3) (1913) I.L.R., 35 All., 512 the Full Bench intended to dissent from the case of Balli v. Naubat (2), which was relied on by the appellant, who succeeded; but I think the dictum at the foot of page 515 in 35 All., requires further consideration. Apparently the Chief Justice thought that Section-34 of Act II of 1901 could be made to work so long as the person was occupying the land 'without permission' of the landlord. The words in the Section are not 'without permission.' I am satisfied that the words 'a person occupying land without the consent of the landlord' mean one who enters into occupation without express consent or without any previous arrangement with him. Two reasons seemed to me very strong to show this. If Section 34 can be worked only against a person who having entered as a trespasser continues in possession 'without permission' of the landlord, it is difficult to see how the landlord is to get rent from a person who remains in possession with his permission. Secondly, such a person is said by the Section not to be deemed to hold the land within the meaning of Section 11

of the Agra Tenancy Act until he begins to pay rent. Section 11 deals only with tenants, and, I cannot see how such a person could be deemed to be a tenant within Section 11 so as to make it necessary for the Legislature to exclude him from the operation of Section 11 unless he, was occupying with the permission of the landlord. I think this Consideration lends additional weight to the view of Sir George Knox and of the Senior Member of the Board and I agree with my learned brother that the defendant is liable to be ejected by the Revenue Courts.

7. By the Court:-We dismiss this appeal with costs.

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