

Kallu Vs. Sital

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Court : Allahabad

Decided On : Jan-16-1918

Reported in : AIR1926All255; (1918)ILR40All314

Judge : Piggott and ;Walsh, JJ.

Appellant : Kallu

Respondent : Sital

Judgement :

Piggott, J.

1. In this case the plaintiff Kallu and the defendant Sital are related in this way that their paternal grandfathers were own brothers. Sital is the recorded tenant of a certain occupancy holding. Kallu is actually cultivating certain plots of land, making up one-half of the area of the holding, and is paying for the use and occupation of these plots approximately one-half of the rent recorded as payable by Sital to the zamindar. Sital took proceedings in a Revenue Court to eject Kallu on the allegation that the latter was holding as his sub-tenant. Kallu replied that he was a joint tenant with Sital of the entire holding; that they had apportioned the fields between them merely for convenience of enjoyment, and that the half share of the rent payable by him was paid to the zamindar and not to Sital. On this the Revenue Court directed Kallu to establish his title as co-tenant of the holding by a suit in the Civil Court. This order purports to have been passed under Section 199

of the Tenancy Act, (No. II of 1901). The propriety of the order is not in question before us, and I merely mention this in order that I may not be regarded as committed to the view that this Section was really applicable to the facts above set forth. Kallu's suit for a declaration of his title as joint tenant of the holding to the extent of an undivided half share was decreed by the court of first instance and dismissed by the District Judge in first appeal. On a second appeal filed in this Court by Kallu certain issues of fact were remitted for trial to the lower appellate court and findings have been received. The third issue as drafted would seem only to arise in the event of the findings on the first and second issues being other than what they were, and therefore need not be considered. On the first two issues remitted the findings are that this occupancy holding was acquired by Matola, father of Sital; that Matola was at that time a member of a joint undivided Hindu family along with the descendant or descendants of his paternal uncle Dariyao. The letting was to Matola alone and not to Matola as representing the joint family. On the fourth issue a finding was returned that the tenancy enjoyed by Kallu was the result of a contract between himself and Sital, to which the zamindar was no party, and that it amounted in law to a sub-letting by Sital in favour of Kallu of the particular plots occupied by the latter. In a petition of objections presented to this Court under order XLI, rule 26, the plaintiff appellant has challenged the finding on the second issue, but, curiously enough, has not challenged the finding upon the fourth issue. In argument before us it has been contended that the reasoning upon which the learned District Judge has arrived at his finding on the second issue remitted to him is defective, that it proceeds upon an error of law and that it has been arrived at by mislaying the burden of proof, With regard to the abstract question of law sought to be raised on this appeal, I can only say that I could wish it had arisen in a case in which its consideration was not complicated by other circumstances. However, the position, as I understand it, taken up by the learned District Judge, seems to me substantially correct. It was proved that the letting of the land in question by the zimindar to Matola had taken place many years ago. There was a lease granted as long ago as the year 1864, which is one of the exhibits in the case. Matola, according to the District Judge, was at that time living as a member of a joint Hindu family along with his uncle Dariyao or his first cousin Ganga, or both. He took this land on lease from the zamindar and he threw the

profits derived from the land into the common stock of the joint family of which he was a member. The District Judge says that no such action on the part of Matola could have the effect in law of changing the tenancy from a tenancy in favour of Matola to a tenancy in favour of the entire joint family of which Matola was a member. The interest of a non-occupancy tenant or of an occupancy tenant is not transferable except under the restrictions laid down by Section 20 of the Tenancy Act (No. 11 of 1901). If it were held that the conduct ascribed by the District Judge to Matola in the present case amounted to throwing his rights as occupancy tenant into the common stock of the joint family, and thereby under the Hindu law making those rights parts of the joint assets of that family, it seems to me that the court would in effect be sanctioning a transfer of the holding by Matola to a body of persons, namely, the members of the joint family to which Matola at that time belonged. A special statute like the Local Tenancy Act can and does modify the operation of the ordinary Hindu law in certain matters. The scheme of inheritance laid down by Section 22 of that Act is other than that prescribed by the ordinary rules of Hindu law, and no one denies that, within the scope of its operation, Section 22 aforesaid overrides and prevails against the ordinary Hindu law of inheritance. It seems to me that by a parity of reasoning it follows that, when the zamindar concerned accepted Matola as his tenant, he could not be compelled by reason of any action taken by Matola to accept the entire joint family as his tenant. Our attention has been drawn in argument to one or two reported decisions of the Court. One of these clearly recognizes the fact that a Hindu joint family as such may in its corporate capacity be the tenant of a holding. This proposition I have no desire to dispute. A tenancy of this sort might easily come into existence in favour of the sons of the tenant who originally acquired occupancy rights. And I see nothing in the Tenancy Act to conflict with the view that, if those sons lived together as members of a joint Hindu family, the family as such could be regarded as in possession of the tenancy. In the present case, apart from the abstract question of law involved, we have to meet this difficulty. The findings returned by the learned District Judge are clear and explicit, and the objections taken to them are objections against the train of reasoning by which the District Judge has arrived at those findings. That is what I mean by saying that the question of law involved arises in this case in a complicated form. For the purpose of deciding this

case it seems to me sufficient to say that the finding of the learned District Judge on the second of the two issues remitted to him is not inconsistent with his finding on any of the other issues, and is not shown to be vitiated by any error of law. There remains also the finding of the District Judge on the fourth issue. I understand the finding to be in substance this. The joint family has now admittedly been broken up, and apparently this separation took place between Kallu and Sital. At that time Sital recognized that Kallu had a claim upon him in respect of the profits enjoyed by him from this holding, by reason of the fact that Matola had always thrown those profits into the common stock of the joint family. He therefore entered into an arrangement by which he gave Kallu the right to certain specific plots, making up one-half of the area of the holding, and undertook not to demand from Kallu more rent than he would himself have to pay to the zamindar on account of this one-half of the entire holding. The rent to the zamindar continued to be paid by Sital and receipts were made out in his name. In the absence of any plea in the appellant's petition before us, presented under order XLI, rule 26, against the finding on the fourth issue, I am not sure that the appellant is entitled to ask us to hold that that finding proceeds upon an error of law. Assuming that point, however, in his favour, it seems to me that the reasoning of the District Judge is correct. For the sake of argument, take the case of an ordinary creditor of an occupancy tenant. That creditor is pressing for payment and is willing to take in satisfaction of his claim such profits as he may be able to make out of one-half of the occupancy holding. The tenant is forbidden by law to transfer his interests as such tenant; but he can sub-let, or he can make an assignment of the profits from year to year. Suppose that he gives his creditor the right to occupy and cultivate for his own benefit certain specific plots, forming part of his holding, and agrees only to take in the way of rent the same sum which he will himself have to pay to the landlord on account of those plots. The transaction amounts virtually to a sub-letting in favour of the creditor. The creditor thereby acquires no rights as against the zamindar, and his rights as against the occupancy tenant are limited by the terms of the contract between them. I think therefore that the finding of the District Judge on the fourth issue remitted to him is correct in law and is decisive of the appeal now before us. I would therefore dismiss the appeal with costs.

Walsh, J.

2. I agree.

By the Court.

3. The order of the Court is that the appeal is dismissed with costs.

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