Kallu Vs. Phundan

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Court : Allahabad

Decided On : Mar-21-1946

Reported in : AIR1946All488

Appellant : Kallu

Respondent : Phundan

Judgement :

Verma, J.

1. This is a defendant's appeal arising out of a suit, brought by the respondent in the Court of the Munsif of Pilibhit, for the partition of a grove situated in a Plot No. 710/2. The Munsif dismissed the suit, but the lower appellate Court has set aside the decree and has remanded the suit. Among the pleas raised by the defendant in his, written statement was one to the effect that the suit was not cognisable by the civil Court. He further alleged that, in any event, the plaintiff had no right or title to the grove in suit. The Munsif held that the civil Court had no jurisdiction to entertain the suit. In spite of this, he went on to record a finding on the merits and held that the defendant's allegation, that the plaintiff had no right or title to the grove in suit, was correct. The learned Judge of the Court below has rightly pointed out that the Munsif, being of the opinion that the civil Court had no jurisdiction to entertain the suit, ought not to have tried any other issue and should have returned the plaint to the plaintiff for presentation to the proper Court. He

differed from the finding of the Munsif that the suit was not cognisable by the civil Court. Having held that the civil Court could entertain the suit, he passed an order of remand with the direction that the question of title be tried afresh as, in the learned Judge's opinion, the finding of the learned Munsif was vitiated by certain errors of law.

2. The basis of the learned Judge's finding that the suit was cognisable by the civil Court is - as it had to be - that the parties are 'grove-holders' in respect of the grove in question. It has been contended before us by the appellant's learned Counsel that, on the admitted facts, the parties to this suit could not possibly be grove-holders. A grove-holder is defined in Section 205, U.P. Tenancy Act (17 [XVII] of 1939) as a person who has planted a grove (a) on land which was let or granted to him by a landlord for the purpose of planting a grove; or (b) on land which he held as a tenant other than as a sub-tenant, a permanent tenure-holder or a fixed-rate tenant,...provided the planting of the grove on such land was done with the permission written or oral according to circumstances which need not be specified of the landlord or in accordance with local custom entitling the person to plant a grove on the land held by him as a tenant. The first requisite, thus, is that the person claiming to be a grove, holder must have planted a grove on land of one of the two kinds mentioned in the section. By virtue of Clauses (e) and (d) of Section 206, the transferees and heirs of such planters of groves will also become grove-holders.

3. Learned Counsel for the appellant has contended that, in view of the facts admitted by the plaintiff himself, and having regard to the definition quoted above, the finding that the parties to this suit are grove-holders must be held to be wrong. It appears that no oral evidence was produced in this case. The parties were, however, examined under Order 10, Rule 2, Civil P.C. The statement made by the plaintiff has been laid before us. The relevant portions are as follows:

The plot in dispute has been in our possession for 80 or 32 years. Kalian and I took this bagh on rent (lagan par liya tha). The rent was Rs. 7. Each of the parties has been paying Rs. 3-8. We took it on rent from Hadi Yar Khan Zamindar.... We used to pay rent and used to obtain receipts. There was grove already in existence

when we took the number in dispute on rent.... This is a mango grove...There ate 39 trees now in existence in the number in dispute. The rest of the land is not cultivated. The number in dispute was fall of trees when it was taken on rent. There were 40 trees even when we took it.

4. The argument put forward on behalf of the appellant is that it is abundantly clear from these statements of the plaintiff himself that no land was ever let or granted to him or to the defendant for the purpose of planting a grove. Neither of them could plant or has planted any grove on such land. It is further clear that neither the plaintiff nor the defendant ever planted a grove on land held by either of them as a tenant. It is obvious that, on the plaintiff's own case, what was taken by him and the defendant from the landlord - we, of course, express no opinion as to the truth or falsity of this allegation - was an existing grove and that it was agreed that rent at the rate of Rule 7/- per annum would be paid. It is that very grove which, according to the plaintiff is still in the possession of the parties. The only change that has taken place, according to the plaintiff's statement, is that one tree has disappeared. It appears to us that, in these circumstances, the parties cannot be held to be grove-holders as denned in the Tenancy Act. Their status can be only that of a tenant. It has been suggested by the appellant's learned Counsel that if the plaintiff's allegations of fact are true, the parties are non-occupancy tenants and reference has been made to Section 31 of the Act. It is, however, not necessary for us to determine the class of tenants to which the parties belong if the facts stated, by the plaintiff are accepted. It is sufficient for the purposes of the question that arises before us that on the allegations of the plaintiff himself, they can only be tenants and not grove-holders.

5. It is not denied that a suit for the division of a tenant's holding is a suit of the nature specified in Schedule 4, Tenancy Act. That being so, the civil Court cannot take cognisance of such a suit. Thus the present suit, if it is maintainable (a question on which we express no opinion), can be only in the revenue Court. We are, therefore, unable to uphold the finding of the lower appellate Court that the suit was cognisable by the civil Court. We agree with the learned Judge, however, - as we have already stated - that the Munsif should not have recorded any finding on issue No. 2 which related to the title of the plaintiff. We also agree with him that

instead of dismissing the suit, the Munsif should have returned the plaint to the plaintiff for presentation to the proper Court. For the reasons given above, we allow this appeal and set aside the order of the lower appellate Court. We direct the plaint to be returned to the plaintiff for presentation to the revenue Court. This will be done by the Court of first instance as soon as the record is received in that Court. As we have pointed out above, the Court in which the plaint will now be filed, - if and when it is filed - should disregard the finding of the Munsif on issue No. 2. The appellant is entitled to his costs throughout.