

Ramdhari Vs. Jodhan and ors.

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Court : Allahabad

Decided On : Aug-01-1972

Reported in : AIR1973All81

Judge : K.B. Asthana, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : Second Appeal No. 2454 of 1969

Appellant : Ramdhari

Respondent : Jodhan and ors.

Advocate for Def. : Radhey Shyam, Adv.

Advocate for Pet/Ap. : Rajesji Varma, Adv.

Disposition : Appeal allowed

Judgement :

K.B. Asthana, J.

1. Having heard the learned counsel for the parties, I think the judgment and decree of the Court below has to be set aside.

2. The relief sought in the suit was that the sale deed executed by the first set of defendants in favour of the second set of defendants on 23-9-1968 was void and be cancelled. Such a relief can be claimed under Section 31 of the Specific Relief Act as the plaintiff alleged in the plaint that if the said sale deed is left outstanding it may cause him a serious injury. It is well settled that a specific relief for cancellation of an instrument can only be granted by a civil court and not by a revenue court notwithstanding that the subject-matter of the said sale deed is agricultural land. The view taken by the court below that the plaintiff ought to have filed a suit for a declaration of his rights in the disputed agricultural land and his suit though framed in the manner seeking a relief for cancellation in effect and in reality was a suit for declaration of title, thus cognizable by a revenue court does not appear to be legally sound. The plaintiff opted for the relief of cancellation of the said sale-deed, the mere fact that he could have filed a suit for declaration of his rights before the revenue court will not oust the jurisdiction of the civil court in trying the suit as framed by the plaintiff which is cognizable only by it and not by the revenue court. I am not concerned whether on merits the plaintiff will succeed or deserves to obtain the specific relief claimed; that would be a question for consideration in the suit. The Court below seems to have confused the two concepts. The jurisdiction of a court is always determined by allegations in the plaint. It may be that under the same set of circumstances a plaintiff is entitled to two different kinds of remedies. If he chooses one kind of remedy which can be granted only by the civil court, his plaint ought not to be returned by the civil court for the reason that he ought to have chosen the second kind of remedy which could only be granted by the revenue court.

3. Learned counsel for the defendants-respondents referred to the Full Bench case of *Ram Awalamb v. Jata Shankar*, 1968 All LJ 1108 = (AIR 1969 All 526), *Mewa v. Baldeo*, 1966 All LJ 1084 = (AIR 1967 All 358) and *Rasool Ahmad v. Beni Prasad*, 1965 All LJ 70 = (AIR 1965 All 514). I do not find any thing laid down in the three cases cited which goes against the view I have taken above; rather the observations in the case of *Mewa v. Baldeo* (supra) which has been approved by the Full Bench of *Ram Awalamb v. Jata Shankar* (supra) support my view.

4. For the reasons given above, I allow this appeal, set aside the judgment and decree of the court below and remand the case to the court of first instance for trial and decision in accordance with law. The plaintiff appellant shall be entitled to his costs of this appeal.

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