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Court : Allahabad

Decided On : Sep-11-1936

Reported in : AIR1937All105

Appellant : Babunandan Singh and ors.

Respondent : Phunesh Singh and anr.

Judgement :

1. This is a Letters Patent appeal by the defendants against a decree of a learned single Judge of this Court, under the following circumstances : Plaintiff 1 brought a suit in the Court of the Munsif asking for possession of certain fallow land, trees and bamboo clumps from the defendants. The plaintiff set out that he was the lessee (otherwise the kadar), of the entire 16 annas zamindari under the lease of 19th December 1919 of the whole of the mauza and he stated that in part of a certain sub-number 384/1 in the abadi the house of one Ganesh had stood and that 8 years ago Ganesh had gone away to another village and the zamindar of the village entered into possession of the ruins of the said house. The plaintiff was brought in 1931 and it is clear that by 'zamindar' the plaintiff did not mean himself but meant that the zamindar previous to this theka had entered into possession. The plaintiff, proceeded to say that there were jackfruit trees and bamboo clumps and a mm tree on this fallow land and in para. 5 it is set out that recently the defendants without, the consent of the zamindar had planted some mircha and bhanta on the fallow land and plaintiff 1 had let this portion of land to plaintiff 2 for the construction of a house, but the defendants interfered with, this construction

and forcibly erected a thatched structure and proceeded to plant bananas. The boundaries of the plot were given. The written statement of the defendant pleaded in para. 2 that the house of the defendants had been situated on a portion of the land in question for a very long time. Now the land in question was referred to as 384/1 which is admitted to be a considerable area of the abadi and para. 2 of the written statement proceeded to say that on another portion a nim tree jackfruit, bananas, babul trees, bamboo clumps and rubbish heap belonging to the defendants have been in existence for a long time and on a portion of the land vegetables, etc., were grown; that Ganesh had gone away more than eight years ago and that the defendants had been in possession and occupation of the said land on payment of a rent of Re. 1-0-9 annually for a long time. On 2nd May the parties made oral statement under Order 10, Rules 1 and 2, and the plaintiff's pairokar made an admission that there were chillies and brinjals, that is vegetables, grown on the land by the defendants and this was repeated by the defendant who further stated that the land had not been taken for agricultural purposes; it had been taken for the purpose of tethering cattle, planting trees and growing vegetables; no grain had been sown; that the defendants had got proceeds of rent for the land in question which was Re. 1-0-3 and that the area was 18 acres and the defendants had been in possession of the land for a long time. The defendant however proceeded to give boundaries, three of which are different from the boundaries in the plaint. Now there is therefore a certain amount of confusion in the mind of the defendant as to what precisely was the portion of land intended in the plaint and the plaint did not have any map attached to it to show what portion of land was meant.

2. As the Court found on 2nd May that the pleading of the defendant was not quite clear on the point as to whether the defendant was pleading tenancy and whether an issue regarding it should be sent to the revenue Court, the case was adjourned for the purpose of a clear pleading. Two days later, on 4th May 1931, the defendant made his case clear by putting in an application that he was an agricultural tenant and that Section 273 applied and that an issue should be referred to the revenue Court. Accordingly the Munsif referred the issue to the revenue Court and the revenue Court framed certain issues of which No. 1 was whether the defendants are tenants of the plaintiffs in respect of the plot in dispute,

and on this issue the revenue Court came to the¹ finding that the defendants were tenants of the plaintiff of the plot in dispute. The civil Court therefore dismissed the suit which had been brought against the defendants as trespassers. The plaintiffs then filed an appeal before the District Judge. The District Judge had all the necessary materials before him on the record, as among other things a commissioner had been appointed to go to the plot to make an inquiry and he had prepared a map and given a report on the nature of the land. The lower appellate Court came to the conclusion as follows:

Coming to the merits of the case, I think that the respondents are the tenants of the plot as found by the Revenue Court.... The portion of the abadi plot in dispute is No. 384/9. It is recorded in the name of the father of respondent 1. He was recorded as a non-occupancy tenant and subsequently as a tenant of 12 years' standing. The rent of that plot is paid along with the rent of other agricultural land. It is now urged that the land in suit is really not the plot No. 384/9 but another contiguous to it. A commission was issued by the Revenue Court to determine the same. I agree with the Revenue Court that the rent is paid for the plot of land No. 384/9 and not for the portion of the abadi land on which the respondents' house stands. The Khatauni of 1322 shows that the father was a tenant of 12 years' standing in that plot. The rent of the said plot is Re. 1-0-3 which is not said to be the ground rent of the site of the respondents' house. I do not believe this. The plot of land is an agricultural land and is used for the cultivation of vegetables from over 12 years and the respondents have been rightly found to be tenants of the same. The appeal is therefore dismissed.

3. Now in second appeal it was urged that the land was not an agricultural holding and the provisions of Section 273, Agra Tenancy Act, could not apply and that the procedure adopted by the trial Court was not warranted and that the case had not been legally determined by the Courts. This plea has been accepted by the learned single Judge and he has ordered that the case should be remanded to the Court of first instance for disposal on the merits. It is against this order that the defendants have come in appeal. One difficulty in this matter is that even if the allegation were correct that the Munsif should not have made a reference under Section 273, Agra Tenancy Act, still the case on the merits was before the learned

District Judge and he has come to a finding on the merits and it is not alleged that there was any error of procedure in the Court of the District Judge. Now what was before the learned single Judge of this Court was a second appeal under Section 100, Civil P.C. That section lays down in Sub-section (1) that an appeal may lie on the following grounds : (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law. Neither of these is alleged. The only remaining ground is Sub-section (c) which is as follows:

(c) A substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

4. Now it is not sufficient to show that there was a defect in the procedure of the trial Court. It is necessary to show that the alleged defect in procedure may possibly have produced error or defect in the decision of the case upon the merits by the lower appellate Court. The learned single Judge has not found that there may have been any error or defect in the judgment of the learned District Judge from what he considers an error of procedure on the part of the Munsif. As the learned single Judge has not stated that such a possibility exists, we consider that for this reason alone his decree should be set aside. We may also refer to Section 268, Agra Tenancy Act, which provides that if a suit is instituted in the civil or revenue Court, and an appeal lies to the District Judge or the High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court unless such objection was taken in the Court of first instance; but the (appellate) Court shall dispose of the appeal as if the suit had been instituted in the right Court. In the present case the objection taken is merely that the Munsif in whose Court there was no want of jurisdiction made an error of procedure in referring an issue to the revenue Court. On the principle of Section 268 we consider that as the District Judge has had the case fully before him no such objection can be maintained as regards a reference by an error. We now come to the question of whether the Munsif did or did not make an error in making a reference to the revenue Court. Section 273(1) provides:

If in any suit relating to an agricultural holding instituted in a civil Court the defendant pleads that he holds such land as the tenant of the plaintiff or of a person in possession holding from the plaintiff, the civil Court shall frame an issue on the plea of tenancy and submit the record to the appropriate revenue Court for the decision of that issue only.

5. The argument of learned Counsel is that the Munsif was wrong in holding that this suit related to an agricultural holding and he further argues that he was wrong in holding that the defendants pleaded that they held the land as tenants of the plaintiff. His argument on the second point is that the defendants did not specifically state that they were tenants of the plaintiff. Now in the plaint para. 1 it was set out that the plaintiff was the lessee of the 16 anna zamindari. This was admitted in para. 1 of the written statement. In para. 3 of the additional pleas of the written statement the defendants pleaded:

The defendants have been in possession and occupation of the said land on payment of a rent of Re. 1-0-9 annually. The plaintiffs' allegation that the defendants have recently entered into possession thereof as trespassers is quite wrong.

6. This pleading is that the defendants pay rent for this plot of land. Taken with his pleading in para. 1 that the plaintiff is a lessee of the 16 anna zamindari the pleading must be taken to mean that the rent of Re. 1-0-9 is paid annually to the plaintiff and that the defendants are the tenants of the plaintiff. Learned Counsel however endeavoured to substantiate his point by a reference to a ruling reported in *Rikhai Rai v. Sheopujan Singh* (1910) 7 A.L.J. 960. This ruling deals with a somewhat complicated case in which the defendant had a lease in perpetuity from one Mt. Atrajo Kuer, the mother of the plaintiff, and the plaintiff, Mt. Sheo Kuer, was the daughter of Mt. Atrajo Kuer. The plaintiff died during the pendency of the suit and thereupon a respondent, Sheo Pujan Singh as reversionary heir of the last male owner was placed on the record in place of the plaintiff. On p. 962 it is stated:

The defendant Rekhai Rai in his written statement did not allege that he was a tenant of the plaintiff. He simply stated that he was in possession of the land in

question as a tenant and that the plaintiff was the owner and zamindar.

7. No issue was referred under Section 202, Act 2 of 1901 from the civil Court to the revenue Court, and this Court in appeal held that it was not necessary on those pleadings to make a reference. The reasoning in this judgment is somewhat obscure and we do not consider that it was meant to apply to a case like the present. In our opinion in this case the clear pleading of the defendants is that they were tenants of the plaintiff. We now turn to the next point urged in regard to Section 273, Sub-section (1) of the Tenancy Act, namely, that the Munsif was wrong in considering that the suit related to an agricultural holding. Learned Counsel draws a distinction between the cultivation of vegetables and the cultivation of other crops. Now apparently he derives some of his ideas on this point from the legal ideas of the defendant as put forward in his statement of 2nd May 1931. It is quite true that in that statement the defendant said that the land was not taken for agricultural purposes and proceeded to say that it was taken for the purpose of growing vegetables and that grain had not been sown. Apparently therefore learned Counsel was relying on the legal ideas of the defendant, but we are not tied down in our principles of legal construction to the ideas of a defendant. In Webster's Dictionary 'agriculture' is defined as

the art or science of cultivating the ground, including harvesting of crops and rearing and management o livestock, tillage, husbandry, farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture, and forestry, together with such subjects as butter and cheese making, sugar making, etc.

8. For our purpose it is sufficient to note that this definition includes horticulture which is gardening. The growing of these vegetables is gardening, and therefore agriculture in the broad sense in Webster's dictionary does include the growing of vegetables. We may also notice that the definition of grove land in Section 3, Sub-section (15), Explns. I and II rules out from grove land various things such as bananas and papitas and small fruit trees. In the present case it is stated that bananas are grown on the ground in question. Although the growth of bananas on

land is not grove land, as bananas are mentioned in the Act, we conclude that the growth of bananas would 'be agriculture. The question has been carefully examined by the Commissioner and the revenue Court and the District Judge and they have all come to the conclusion that this land is agricultural land. This is a question of fact and we do not consider that it is now open to dispute the point. On the pleadings before the Munsif he came to the conclusion that the land was agricultural land. In such a case it is not for the civil Court to take evidence on the point, but reference is made under Section 273 on the pleadings alone. We therefore consider that the learned single Judge of this Court was not correct in holding that no reference should have been made. We may mention that the learned Judge states:

No plea was taken that the suit related to an agricultural tenancy and the defendants were the tenants thereof; it was not said that the record should be sent to the revenue Court for the decision of the issue as to whether the defendants held the land as the tenants of the plaintiff.

9. On the contrary the application of defendants on 4th May 1931 did make these allegations. The issue framed by the Munsif was wide enough to cover the matter. We may also refer to a Full Bench case on this point of the interpretation of Section 273, *Manohar Shingh v. Sheo Saran* : AIR1927 All369 . For these reasons we allow this Letters Patent appeal and we set aside the decree of the learned single Judge of this Court and we restore the decree of the learned District Judge with costs.