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Makkhan Vs. Mir Singh

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Court : Allahabad

Decided On : Feb-21-1923

Reported in : (1923)ILR45All404

Judge : Pramada Charan Banerji and ;Gokul Prasad, JJ.

Appellant : Makkhan

Respondent : Mir Singh

Judgement :

Pramada Charan Banerji and Gokul Prasad, JJ.

1. This appeal and the connected second appeals Nos. 1408 and 1643 of 1921 arise out of a unit brought under the following circumstances. The defendant made an application to the criminal court under Section 145 of the Code of Criminal Procedure in respect of certain plots of land and the sugarcane crop which existed on that land. Both parties claimed the sugarcane crop and claimed to be in possession. The criminal court caused the sugarcane crop to be sold by auction and the amount realized by the sale, was Rs. 1,450-8. After the case under Section 145 of the Code of Criminal Procedure was decided, the present plaintiff applied to the criminal court for payment to him of the j aforesaid amount which had been placed in deposit with one Banaras Das. The criminal court referred the plaintiff to the civil court to have his title to the money determined. Thereupon the present suit was brought for a declaration-that the| aforesaid sum of Rs. 1,450-8

was due to him, the sugarcane crop having been raised by him and not by the defendant. The plaintiff-no doubt stated that he was the sub-tenant of the defendant in respect of the four plots of land on which the sugarcane crop had been grown, but both the courts below have found that this statement was not true. The court of first instance came to the conclusion that the four plots of land on which the sugar-cane crop had been grown formed the cultivatory holding of the defendant, that the zamindar had dispossessed the defendant and had put the plaintiff into possession and that the plaintiff had sown the crop. That court was of opinion that as the find was the cultivatory holding of the defendant, the plaintiff should be awarded only a half of the value of the crop although the whole crop, according to the court's finding, had been raised by the plaintiff alone. One fails to understand on what principle this decree was made. If the crop was raised by the plaintiff it belonged to him. He may not have any title to the land on which the crop was grown, but the crop itself was his property and therefore he was entitled to the price of the sugarcane which he had raised on this land. From this decree of the court of first instance both parties appealed. The learned Judge of the lower appellate court found that the defendant had failed to prove that he had raised the crop and he came to the conclusion that the crop had been grown by the plaintiff. if is true that he said in his judgment that inasmuch as the defendant had admitted in the revenue court that the crop had been town by the plaintiff, the onus lay upon him to prove that he had grown the crop. The question of onus did not at all arise in the lower appellate court as both sides had given evidence. In this case; the allegation of one party was that the sugarcane crop belonged to him and that of the other party was that he was the owner of the crop. No third party was involved. The crop was either raised by the plaintiff or by the defendant. If the defendant failed to prove that he had raised the crop, the inevitable conclusion was that it was the plaintiff who raised it, and the finding of the lower appellate court is that the crop had been grown by the plaintiff. That court further found that the landlord forcibly dispossessed the defendant and put the plaintiff into possession, and that during I he period of the plaintiff's possession he had planted the sugarcane and raised the crop. That being the finding of the lower appellate; court, if was the plaintiff who was entitled to the crop and to the amount which represented, the value of the crop. There was no principle of equity under which the defendant

could take away or appropriate any portion of the crop. If the landlord wrongfully dispossessed him, his remedy was to Sue for restoration of possession and for compensation from the landlord for wrongful dispossession; but he could not claim any portion of the crop existing on the land which had been grown not by him but by the plaintiff. The learned Judge was, therefore, wrong in our opinion in holding that upon some equitable principle the defendant was entitled to one-third of the crop and in making a decree in the plaintiff's favour for two-thirds only. From this decision of the learned Judge the three appeals before us have been preferred, two of them, namely S.A. Nos. 1407 and 1408 of 1921, by the defendant and No. 1643 by the plaintiff. It is urged on behalf of the defendant that the civil court was not competent to entertain the suit and that the suit ought to have been instituted in the revenue court. This plea is clearly untenable. The matter in controversy between the parties was the value of the sugarcane crop, and what the plaintiff claimed was a declaration to the effect that he was entitled to the value of the crop. There was no dispute in the suit as to the title to the land on which the crop was grown. Incidentally the question might arise, by what title the plaintiff had grown the crop. He no doubt said that lie was the sub-tenant of the defendant, but he failed to substantiate that statement, and the court came to the conclusion as stated above, that the zamindar had wrongfully dispossessed the defendant and had put the plaintiff into possession. This act of the zamindar may have been improper, but there was no question of the title to the land in the present suit, and consequently the suit could not be brought in the revenue court. Mr. Mital called our attention to the ruling in Ram Singh v. Girraj Singh (1914) I.L.R. 37 All. 41 but that ruling manifestly has no application to a case of this kind.

2. The next contention was that the court below had wrongly placed the onus of proof on the defendant. We have already commented on this matter. There was no question of onus of proof m the case before the lower appellate court, both sides having given evidence; all that it had to decide upon the evidence was whether the crop belonged to the plaintiff or to the defendant. If the crop had not been grown by the defendant, the only other person who could have grown it was the plaintiff and +he finding was that it was the plaintiff's crop. Therefore1 the appeals which have been preferred by the defendant are without force and must be dismissed. As regards the plaintiff's appeal, it must succeed. Upon the finding that the crop

was raised by the plaintiff, he is entitled to the amount which was realized by sale of the crop, and to this amount the defendant has no title. The whsle of the plaintiff's claim ought to have been decreed. The result is that we dismiss the appeals of the defendant with costs and decree the plaintiff's appeal with costs.

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