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Court : Allahabad

Decided On : Nov-27-1919

Reported in : AIR1919All23; (1920)ILR42All222

Judge : Tudball and ;Ryves, JJ.

Appellant : Raghunath

Respondent : Ganesh and ors.

Judgement :

Tudball and Ryves, JJ.

1. The facts of this appeal are as follows: The plaintiff is the owner of a two anna share out of an eight anna share in a certain village in the district of Hamir-pur. His father died leaving him a minor, and one Musammat Piari, apparently his mother, looked after his affairs. She mortgaged his share. Subsequently proceedings were taken under the Bundelkhand Encumbered Estates Act. The creditor was paid off by Government and Musammat Piari proceeded to repay Government by instalments. After she had paid up a part of the debt she died. Another sarbarhkar was appointed in her place and then the owners of the eight anna share gave a zar-i-peshgi lease to the defendants respondents before us of the whole eight annas. The plaintiff's sarbarahkar was a party to this lease. The plaintiff has now come of age and he has brought the present suit to eject the defendants respondents from his two anna share and to obtain possession thereof for himself.

An examination of the plaint will show that he has treated the transaction under which the defendants obtained possession as a lease. He has alleged, however, that his sarbarahkar, Toraiyan, had no power whatsoever to grant a lease of his property or to transfer it in any way. Ho therefore pleads that the lease is not binding upon him and he seeks to eject the defendants as trespassers on the property. The suit was instituted in the court of the Munsif at Hamirpur. The defendants' written statement may be boiled down to this. First of alt that the sarbarahkar had full power to grant the lease, and, secondly, that even if he had not, still the plaintiff on coming of age had confirmed the lease and had accepted rent under it. Though in definite terms the defendants did not plead that they were the plaintiff's tenants, yet the whole sum and substance of their defence is that they are his tenants, and further they clearly plead that the suit was not cognizable by the Civil Court but was cognizable only by the Revenue Court. The court of first instance held that the suit was not cognizable by the Civil court, but, instead of returning the plaint to fee filed in the proper court, it dismissed the suit. From this decree the plaintiff filed an appeal, as be was fully entitled to do. He urged in the grounds of appeal that the suit as it stood was cognizable by a Civil Court and should have been entertained by the Munsif. At the time that the appeal was argued it was further urged that even if the Munsif's decision, was a correct one, his decree dismissing the suit was bad and the plaint should be returned for presentation to the proper court. The appellate court agreed with Munsif that the suit was not cognizable by the Civil Court. It agreed with the appellant that the Munsif ought to have returned the plaint and not to have dismissed the suit, and, accepting this contention, it ordered the plaint to be returned to the plaintiff. The plaintiff has come here on appeal from this order. A preliminary objection was taken that no appeal would lie from the order of the court below on the ground that if the court of first instance had done its duty and passed a proper order, no second appeal could have lain against an order passed by the lower appellate court on appeal from the Munsif's order. We do not think that there is any substance in this point, as we have to take the facts as they are and not as they ought to have been. We must come to the merits of the appeal. In substance the plaint is an allegation by the plaintiff that the defendants are not his tenants. Ho distinctly pleads that they are trespassers and that he seeks to eject them, On the

plaint; as it stands we do not think that the suit could have been instituted in the Revenue Court. Neither Section 58 nor Section 34 of the Tenancy Act, to which we have been referred, will enable the plaintiff to file his present plaint in the Revenue Court and claim to have a decision on it. We have not been referred to any other section of the Tenancy Act which would enable him to bring this suit under that Act. In, substance the defendants' plea is that they are the tenants of; the plaintiff under the lease in question and that it is a valid and binding transaction. It seems to us, therefore, quite clear that in these circumstances the Civil Court ought to have entertained the suit and ought to have taken action under Section 202 of the Tenancy Act, and the question of the defendant's tenancy would then really be decided by a Revenue Court. The courts below have merely erred in the procedure adopted by them, but still the procedure laid down by law must be followed. It must be noted that there has been no previous litigation between the parties either in the Revenue or Civil Court in respect of the matter in dispute in this suit. The rulings in Mam Singh v. Girraj Singh (1914) I.L.R. 37 All. 41, and Sher Khan v. Debi Prasad (1915) I.L.R. 37 All. 254, do not apply to the present case, for in each of the suits with which those decisions are concerned there was (in the end at least) an admitted tenancy, and the plaintiffs were merely making an attempt to get round a decision of the Revenue Court already passed. In this view we allow the appeal, we set aside the orders and the decrees of the courts below, and we direct that the record be returned to the court of first instance through the lower appellate court with directions to re-admit the suit on its original number and to proceed to hear and decide it according to law, keeping in view pur remarks in respect of the use of Section 202 of the Tenancy Act. Costs of this appeal as well as the costs so far incurred up to the present date by the parties in all courts will abide the result of the suit.