

Ammar and ors. Vs. Govind and ors.

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Court : Allahabad

Decided On : Mar-05-1925

Reported in : AIR1925All465

Appellant : Ammar and ors.

Respondent : Govind and ors.

Judgement :

1. On the 26th of July, 1921, five of the present respondents to this appeal brought a suit against Ammar, plaintiff No. 1 in this matter, alleging that they (the respondents) were tenants-in-chief and that he (Ammar) was a subtenant. The suit was for arrears of rent. Ten days later Ammar and his three brothers brought a suit in the Civil Court against all the six respondents alleging that they (the four brothers) had a joint and equal right of occupancy with the six respondents. On the 28th of September, 1921 the Revenue Court passed an ex parte decree in favour of the present respondents, thus accepting their statement that they were in fact tenants-in-chief, and that Ammar was a sub-tenant. There the matter rested for the moment, but on the 20th of December the Munsif gave a decision in the case now under consideration. One of the pleas undoubtedly taken was that the suit for a declaration that the plaintiffs were joint in occupancy with the defendants was a matter that was exclusively triable by the Revenue Court, because the Munsif in his judgment says that he has no doubt whatever that he has jurisdiction to try this matter. He gave a decision upholding the claim of the four plaintiffs. Sometime after the 20th of December and on a date previous to the 8th of May, 1922, the ex

parte decree was set aside and the suit for the arrears of rent as between tenants-in-chief and an alleged sub-tenant was dismissed. From the decision of the Munsif there was an appeal to the District Judge heard on the 8th of May, 1922, and notwithstanding the very definite statement of the Munsif on the subject of jurisdiction, there was no appeal from the Munsif to the District Judge on this question of Section 167 of the Local Tenancy Act. The District Judge affirmed the finding of the Munsif, and the matter then came before a single Judge of this Court, who on the 22nd of February, 1924, came to the conclusion that Section 167, which had then been put in the forefront of the grounds of that appeal, was a bar to the suit. We have asked the learned Counsel who appears for the respondents to turn to the fourth schedule of the Act and to point out to us any suit or proceeding therein described which the plaintiffs in this present suit could have embarked upon in the Revenue Court. He has told us, and frankly, that there is in the fourth schedule no suit of the character now before us, and that there does not appear to have been in the fourth schedule any provision for a suit by which people alleging themselves to be co-tenants can go to a Revenue Court and ask for a declaration that they have a right of co-tenancy joint and co-equal with that of the persons whom they have made defendants. That appears to be right, but it does not quite exhaust the argument for the respondents, because the learned Counsel has laid stress upon the fact that there was in existence at the date of the commencement of the civil suit, which was August 6, 1921, a proceeding pending before the Revenue Court taken at the instance of the present respondents against one of the present appellants which in effect would have determined the question which the present appellants sought to determine by this action. We are not sure that that is right. The real question before that Court was, whether Ammar, the defendant in the Revenue Court was liable to pay a rant as subtenant? The answer to that might have been a simple negative, but it does not follow at all that there was necessarily any exact definition of his rights or of the position in which he stood as regards the then plaintiffs; nor would it include a definition of the rights of the three other persons who on the 6th of August, 1921, allied themselves with Ammar in this declaratory suit. We think that the Munsif was right in holding that he had jurisdiction, and that, unless the fourth schedule of the Act was produced before him and a suit or application of a precisely similar kind

and parallel in its results was shown to him as being a suit exclusively triable by the Revenue Court, he was within his rights, and it was, indeed, his duty to hear and determine the matter brought before him by the then four plaintiffs. That being so, we are of opinion that this appeal must be allowed with costs. We therefore set aside the decree of the learned Judge of this Court and restore that of the lower Appellate Court. The cost of both hearings in this Court will include fees on the higher scale.

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