

Bachan Singh Vs. Ram Buksh Singh

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Court : Allahabad

Decided On : Oct-31-1945

Reported in : AIR1946All287

Appellant : Bachan Singh

Respondent : Ram Buksh Singh

Judgement :

Iqbal Ahmad, C.J.

1. This and the two connected Letters Patent Appeals Nos. 1 and 2 of 1944 arise out of three suits instituted in the revenue Court on 26th August 1939, by Earn Buksh plaintiff-respondent against three different persons Bechan Singh, Nawab Singh and Munshi Singh under Section 44, Agra Tenancy Act (III of 1926). The plaintiff alleged that he was the occupancy tenant of plot No. 385 and that the defendant in each suit had wrongfully taken possession of different portion of the plot in question, and as such, the defendant in each suit was liable to ejectment in accordance with the provisions of Section 44. The defendant in each suit pleaded that he was one of several cosharers in the patti in which the plot in dispute was situated and accordingly the suits did not fall within the purview of Section 44. They also contended that suits were barred by limitation. An issue on the question of proprietary title raised by the defendants was referred by the Assistant Collector to the Munsif who held that each of the defendants was a cosharer in the patti in question. On receipt of the finding from the civil Court the Assistant Collector,

following the rulings of the Board of Revenue, held that the illegal dispossession of a tenant by one of several cosharers of a mahal or patti attracts the provision of Section 44 and, therefore, the suits fell within the purview of that section. He further held that the suits were within time and accordingly decreed all the three suits on 23rd September 1940.

2. It would be noted that the suits were filed on a date on which the Agra Tenancy Act of 1926 was in force but were pending on the date on which the U.P. Tenancy Act (17 [XVII] of 1939) came into force, viz., on 1st January 1940. Being aggrieved by the decision of the Assistant Collector the three defendants in each of the three suits filed three appeals in the Court of the District Judge. It is not disputed that the appeals did lie in the Court of the District Judge. The District Judge held that Section 44 had no application to the case and that the suits fell within the purview of Section 99 of the Act of 1926. He further held that the dispossession of the plaintiff from the plot in dispute had taken place more than a year before the date of the institution of suit and as the period of limitation for a suit under Section 99 was only six months, the suits were barred by limitation. In this view of the matter, the District Judge reversed the decrees passed by the Assistant Collector and dismissed all the three suits.

3. Three second appeals were filed in this Court by the plaintiff and those appeals were disposed of by a learned single Judge of this Court. He, following the rulings of this Court, agreed with the view of the District Judge that the suits were suits under Section 99 and not under Section 44 of the Act of 1926. He, however, did not agree with the District Judge on the question of limitation and, in view of the provisions of Section 296 of the Act of 1939, held that the suits were within time. He accordingly allowed the appeals and decreed the plaintiff's suits. The three Letters Patent appeals before us are against the judgments of the learned Judge of this Court in the three second appeals mentioned above. In our judgment, the decision of the learned Judge of this Court is perfectly correct and ought to be affirmed. It was held by this Court in *Ram Agvan Pandey v. Chatrugan* ('33) 20 A.I.R. 1933 All. 44 that even where a tenant is wrongfully dispossessed from his holding by one of several landholders, his remedy is by means of a suit under Section 99 and not by a suit under Section 44 of the Act of 1926. This view though

at variance with the view taken by the Board of Revenue has been consistently followed in this Court and commends itself to us. It follows that the suits filed by the plaintiff were suits under Section 99 of the Act of 1926 and that the decision of the District Judge and of the learned single Judge of this Court on this point is, therefore, correct. This brings us to a consideration of the other question, namely, whether, in view of the fact stated above, the suits with which we are concerned were, as held by the District Judge, governed six months' period of limitation provided by the Act of 1926 or by three years' period of limitation provided by the Act of 1939. Section 99 of the Act of 1926 corresponds to Section 183 of the Act of 1939 and, while the period of limitation for a suit under Section 99 prescribed by the schedule to the Act of 1926 was six months, the period of limitation for a suit under Section 183 prescribed by the schedule to the Act of 1939 is three years. It is common ground that the plaintiff was dispossessed from the plot in question more than a year but less than three years before the institution of the suits. It is, therefore, clear that if the suits were governed by the period of limitation prescribed by the Act of 1926, the suits were time-barred, but it is equally clear that if the period of limitation prescribed by the Act of 1939 was applicable the suits were within time. Section 296 of the Act of 1939 inter alia provides that

a suit under any of the provisions of the Agra Tenancy Act, 1926...which is pending at the commencement of the Act...shall be decided...in accordance with the corresponding provision of this Act....

As has been stated above, the suits in question were pending on the date that the Act of 1939 came into force and it is, there, fore, manifest that the suits had to be, in view of the mandatory provisions of Section 296, decided in accordance with the provisions of the Act of 1939. One of the provisions of that Act, as already stated, relates to the period of limitation governing suits under Section 188, that period being three years from the date of dispossession of the plaintiff. It appears to us, therefore, that there is no escape from the conclusion that the limitation applicable to the suits with which we are concerned and which were decided after the coming into force of the Act of 1939 was three years and the suits were, therefore, as held by the learned Judge of this Court, within time. The learned Counsel for the appellant, however, places reliance on Section 35(1)(f) of the Act of 1926 and

contends that in view of the provisions contained therein the interest of the plaintiff as a tenant of the plots in dispute was extinguished on the date of the suits, and, as such, the plaintiff was not entitled to a decree. Section 85(1)(f) reads as follows:

The interest of a tenant shall be extinguished where the tenant has been deprived of possession and his right to recover possession is barred by limitation.

4. It cannot be disputed that the repeal of an enactment cannot, unless a different intention appears, affect any right or liability acquired or incurred under any enactment so repealed. This is enacted by Section 6, U.P. General Clauses Act (1 [I] of 1904). It follows that the right of the plaintiff as an occupancy tenant, the extinction of which had been brought about by the provisions contained in Section 35(1)(f) of the Act of 1926, could not be revived by the Act of 1939, which repealed the Act of 1926, unless a different intention appears from the Act of 1939. As we read Section 296 of the Act of 1939 it seems to us that 'a different intention' does clearly appear to have been expressed by the Legislature in that section. That section does enjoin the Courts to decide pending suits in accordance with the 'corresponding provision' of the Act of 1989. Section 45(f) of the Act of 1939 corresponds to Section 85(1)(f) of the Act of 1926. In our judgment, therefore, the words 'and his right to recover possession is barred by limitation,' in Clause (f) of Section 45 have to be interpreted in the light of the provisions laid down in the Act of 1989. As stated before the period of limitation for a suit under Section 183 is three years from the date of dispossession and accordingly in the case before us the plaintiff's right to recover possession of the plot in dispute was not barred by limitation. It follows that the plaintiff's interest in the plot in question could not be held to have been extinguished when the suits came up for decision.

5. Reliance was placed by the counsel for the appellant on the case in *Radhey Shiam v. Jugal Kishore* : AIR1944 All223 . It was held in that case that Section 296 of the Act of 1939 refers to the procedure that has to be followed with respect to pending suits and does not affect the rights acquired before that Act came into force. With great respect to the learned Judges who decided that case we are unable to subscribe to this view. Section 296 is not, in our judgment, limited in its operation only to the procedure that has to be followed in pending suits. On the

contrary, it enjoins that the decision of the pending suits has to be in conformity with the corresponding provision contained in the Act of 1939. The Act contains provisions not only relating to procedure but also relating to substantive rights. It cannot, therefore, in our opinion, be laid down that in no case can rights acquired under the old Act be affected by the provisions of the new Act. For the reasons given above, we dismiss this and the connected appeals with costs.

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