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Mst. Fatma Bibi Vs. Sayed Ali Hasan

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Court : Allahabad

Decided On : Feb-22-1949

Reported in : AIR1949All769

Appellant : Mst. Fatma Bibi

Respondent : Sayed Ali Hasan

Judgement :

Seth, J.

1. This is an application in revision against an order of the lower appellate Court, directing the memorandum of appeal to be returned for presentation to the proper Court. By the proper Court is intended the appellate revenue Court, namely, the Commissioner. The suit giving rise to this application in revision was instituted under Section 180, U.P. Tenancy Act. It was contested by two of the defendants on the ground, among others, that they were in proprietary possession of the disputed plots. An issue framed as follows was referred to the civil Court for decision:

whether Mt. Basra Bibi and Mt. Fatima Bibi are in proprietary possession of the plots in suit.' The issue was re-framed by the civil Court in the following words:whether the defendants Mt, Basra Bibi and Mt. Fatima Bibi are proprietors of the plots in suit?

The issue was decided by the civil Court and a finding returned to the revenue Court. Thereafter the revenue Court proceeded to decide the whole suit on merits. It passed a decree in favour of the plaintiff. Mst. Fatima Bibi appealed against the decree and the appeal came up for hearing before the Civil Judge of Azamgarh, who passed the order directing the memorandum of appeal to be returned for presentation to the proper Court.

2. The learned Civil Judge has held that there was no dispute about any proprietary right in the case, the only dispute that required decision being whether the disputed plots were khud-kasht plots of Mt. Basra Bibi and Fatima Bibi or they were occupancy plots of the plaintiff and as such by virtue of Expl. II, to Section 286, U.P. Tenancy Act, no question of proprietary right was involved.

3. Section 286 (4), reads as follows:

An appeal from a decree of a revenue Court passed in a suit in which an issue involving a question of proprietary right has been decided by a civil Court under Sub-section (2) shall lie to the civil Court which having regard to the valuation of the suit, has jurisdiction to hear appeals from the Court to which the issue of proprietary title has been referred.

It would appear that all that is required to confer jurisdiction upon a civil Court to hear an appeal is that an issue involving question of proprietary right should have been decided by a civil Court under Sub-section (2) of Section 286. It is not required that the decision of that issue should be necessary for the decision of the suit. The conditions of Section 286 (i) were, therefore, satisfied and the appeal lay to the Civil Judge, Explanation II rally provides that:

A question of proprietary right does not include the question whether land is sir 'or khudkasht.'

If, therefore, the issue referred to the civil Court had been whether the land was sir or khudkasht or not, in that case the lower appellate Court would have been right in holding that an issue of proprietary right had not been referred to the civil Court. But this is not what took place in the present case.

4. Learned Counsel for the opposite parties has further relied upon Expl. (1) to Section 286, aforesaid which reads as follows:

A plea of proprietary right which is clearly untenable and intended solely to oust the jurisdiction of the revenue Courts shall not be deemed to raise a question of proprietary right within the meaning of this section.

In my opinion, this explanation does not help the opposite-parties. In the first place, it cannot be said that the plea of proprietary right raised in the present case was an untenable plea, A plea which has been found to have been substantiated by one of the Courts cannot be said to be an untenable plea whether ultimately it is sustained or not. In the second place, it cannot be said that the plea was put forward solely with a view to oust the jurisdiction of the revenue Court. It was never pleaded by the defendants that the revenue Court, where the suit was instituted, had no jurisdiction to entertain the suit. The plea was, therefore, not put forward to oust the jurisdiction of the revenue Court.

5. In refusing to entertain the appeal and in directing the memorandum of appeal to be returned for presentation to the proper Court, the lower appellate Court has failed to exercise jurisdiction vested in it by law.

6. This application in revision is accordingly allowed, the order of the lower appellate Court is set aside and the case is remanded to that Court with the direction that it should admit the appeal and proceed to decide it in accordance with law. The applicant shall get her costs of this application in revision. Other costs shall be in the discretion of the lower appellate Court.

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