

Ranjit Rai and ors. Vs. Juthan Rai and ors.

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Court : Allahabad

Decided On : Apr-06-1937

Reported in : AIR1937All638

Appellant : Ranjit Rai and ors.

Respondent : Juthan Rai and ors.

Judgement :

ORDER

Niamatullah, J.

1. This is a revision under Section 115, Civil P.C., against an order passed by the Civil Judge of Ghazipur upholding that of a Munsif of that District returning the plaint in a civil suit for presentation in the revenue Court. It is contended in revision that the suit is cognizable by a civil Court and that the lower Courts, were wrong in disclaiming their jurisdiction. The land in dispute was admittedly held by one Bhagat Rai as a perpetual lessee under a lease dated 25th January 1859. The lease was granted by all the then co-sharers, who are now represented by the plaintiffs and defendants first and second sets. Under the same lease several other parcels of land were similarly granted to other perpetual lessees, but the present litigation does not relate to those other lands. Bhagat Rai died sometime in 1880, and was succeeded by his widow, Mt. Chilra, who died in 1927. At the time of her death the land was actually cultivated by defendants third set as sub-ten-

ants and they are still in occupation of it. The plaintiffs' case, as set out in the plaint, is that Bhagat Rai died without leaving any heirs other than his widow, on whose death the tenancy completely lapsed, with the result that the landlords became entitled to re-enter. According to the plaintiffs, the present landlords are the plaintiffs and the defendants first and second sets, who are entitled to collect, rent from the actual cultivators, namely, the defendants third set. They go on to allege that the defendants first set claim to be the successors-in-interest of Bhagat Rai on the allegation that the tenancy belonged to a joint family consisting of Bhagat Rai and defendants first set and that on the death of Bhagat Rai the surviving members of the family, namely, defendants first set, became entitled to continue in occupation of the land in terms of the perpetual lease. The relief, which the plaintiffs seek, is a declaration that the defendants first set are not

the heirs of the deceased Baghat Rai and are in no way entitled to remain in occupation of the tenancy rights of the deceased as given to him by the deed of 25th January 1859 and that the plaintiffs along with the defendants first set and second party are entitled to let the land described in Son. 1 attached to this plaint and to collect rents from the persons who are actually cultivating the said land or from any other tenants.

2. In one part of the plaint it is definitely alleged that the defendants third set pay rent to the plaintiffs. Both the lower Courts have held that the suit falls within the purview of Section 122, Agra Tenancy Act, and is therefore exclusively cognizable by a revenue Court. Learned Counsel for the plaintiffs contends that Section 122 contemplates cases in which there is a dispute between two rival tenants or sets of tenants and the plaintiff is in doubt as to which of them is entitled to hold the land as tenant and that, where the dispute is between the landlord and certain persons who claim to be tenants but whose right as such is denied by the landlord, Section 122 has no application. On the construction of the plaint he argues that the dispute is between the plaintiffs claiming to be some of the landlords and the defendants first set, who claim to be the tenants but whose right as such is denied by the plaintiffs. It is said that the plaint does not disclose a case of rival claims being put forward by the defendants first set and the defendants third set, each claiming to be the tenant of the land held originally by Bhagat Rai.

3. Section 122 lends support to the contention put forward on behalf of the plaintiffs and seems to be applicable only to a case in which the landlord is in doubt as to which of the two contending parties is the tenant of his land. This is made clear by the nature of the relief which the landlord is allowed to seek in a suit under that section. That relief is 'to have it declared which of such persons is the tenant'. The section does not apply to a case in which the dispute is between the landlord and another person claiming to be a tenant but whose right as such is denied by the landlord, there being no rival claimant to the tenancy in the field. In such a case, if a suit is instituted in the civil Court, the Legislature meant to apply the provisions of Section 273, which requires the civil Court to frame an issue on the plea of tenancy and a call for a finding from the revenue Court, which is considered to have exclusive jurisdiction to decide whether the relationship of landlord and tenant exists between two persons.

4. Learned Counsel for the plaintiffs points out that Section 273 does not apply to the present case, as according to the plaint the defendants first set do not claim to be the tenants of the plaintiffs but claim to be the tenants of the entire proprietary body, including the plaintiffs, the defendants first set in a different capacity and defendants second set. I am not called upon to express any opinion on the soundness or otherwise of this contention, because the lower Courts have construed the plaint as one disclosing a case of dispute between two rival tenants and have followed *Het Kuar v. Tejpal Singh* : AIR1933 All564 , in which Section 122 was held to be applicable in circumstances somewhat similar to those of the present case. That case is sought to be distinguished on the ground that the actual cultivators had claimed to be the principal tenants and the defendants, whose right was opposed by the plaintiffs, claimed to be proprietary tenants.

5. It is said that in the present case the defendants third set do not claim, according to the plaint, to be the principal tenants. These defendants have not filed any written statement. It is said that it may well be that they are content with the position of sub-tenants. This supposition is however negated by a clear statement in the plaint to the effect that defendants third party pay rent direct to the plaintiffs. If they had been content to hold the land as before, only as sub-tenants, they would have paid rent to the persons whom they recognized to be the principal

tenants. The fact that the plaintiffs claim to be entitled to collect rent directly from the defendants third set and the fact that the defendants third set recognized the plaintiffs' right to receive the rent and actually paid it to them shows that the defendants third set claimed to be the tenants of the land in dispute. The plaintiffs have not, in so many words, alleged in the plaint that these defendants claim to be the tenants in competition, with defendants first set, but their allegation that they receive rent from them and that they pay rent to them (the plaintiffs) may be interpreted as amounting in substance to the allegation that they are the principal tenants and claim to be such. The lower Courts were at liberty to put that interpretation on the plaint. I cannot sitting in revision hold that they had no jurisdiction to construe the plaint in that sense or that they acted illegally or with material irregularity in the exercise of their jurisdiction. On that interpretation the suit falls within the purview of Section 122 and the civil Court has no jurisdiction. The result is that the revision is dismissed with costs.

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