

Partap Singh Vs. Kewal Ram

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Court : Allahabad

Decided On : Jul-19-1910

Reported in : 7Ind.Cas.737

Judge : Karamat Husain, J.

Appellant : Partap Singh

Respondent : Kewal Ram

Judgement :

Karamat Husain, J.

1. The land in question was the occupancy holding of one Shib Dayal. On his death, Kewal Ram, the plaintiff in the present suit, under Section 22 of the Agra Tenancy Act, applied for entry of his name as occupancy tenant. The first Court refrained from directing the entry of Kewal Rani's name because the zemindar Partap Narain had wrongfully taken possession of the land. Kewal Ram appealed to the Collector who directed that the name of Kewal Ram be entered as occupancy tenant in place of Shib Dayal deceased. On the strength of that entry, Kewal Ram instituted a suit against Partap Singh for ejectment on the allegation that Partap Singh was his sub-tenant. One of the pleas taken in defence was as follows: 'Shib Dayal was the occupancy tenant of the land from which the defendant is sought to be ejected. He died in April 1907, childless and without leaving any heir. The answering defendant took the land under his own cultivation

without the plaintiff's consent and got another plot No. 1313 comprising 6 biswansis of land to be cultivated by another tenant. The answering defendant is in possession of the holding as an owner of khudkasht land. The plaintiff is not competent to seek ejectment.' One of the issues framed by the Court of first instance was: 'Whether the relationship of landlord and tenant exists between the parties.' The Court of first instance decreed the claim. The defendant appealed and the first plea in the memorandum of appeal presented to the lower appellate Court was as follows: The plaintiff zemindar is in possession by right of proprietorship. The respondent has not proved that the appellant is his subtenant. The lower appellate Court affirmed the decree of the Court of first instance. That Court in its judgment observes: 'This appeal must be dismissed on the preliminary objection that there is no issue of proprietary title in question. The plaintiff-respondent did not deny that the defendant-appellant is the zemindar of the holding in question. The only point is whether the defendant is in possession in his capacity as landlord or in the capacity of a sub-tenant of his occupancy tenant, the plaintiff. At the same time, the form in which the suit was brought was very misleading and plaintiff apparently suppressed the fact that the defendant was the zemindar. For this reason, the appeal is dismissed.'

2. In second appeal, it is contended on behalf of the defendant-appellant that as a question of proprietary title was in issue in the Court of first instance and also in appeal, an appeal lay to the District Judge and the learned Judge was wrong in dismissing the appeal on the preliminary point. In support of this contention, reliance is placed on the case of Dal Chand v. Sham Lal 2 A.L.J. 176 : A.W.N. (1905) 6. This case fully supports the contention of the appellant. I, therefore, allow the appeal, set aside the decree of the Court below and send back the case under Order XLI, Rule 23, to the Court below for decision on the merits. Costs to abide the event.