

Parmeshari Vs. Krishna Kumar

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Court : Allahabad

Decided On : Mar-29-1944

Reported in : AIR1944All194

Appellant : Parmeshari

Respondent : Krishna Kumar

Judgement :

Sinha, J.

1. This is a defendants' appeal and arises out of a suit for actual possession with regard to a portion of the property and constructive possession with regard to the rest of the property. The facts very briefly are these. One Jageshwar owned some fixed rate tenancy and also some miscellaneous trees. He made a usufructuary mortgage some time ago in favour of two persons, Kandhai and Dhanai, of the property mentioned in list B of the plaint. On 4th June 1926 Jageshwar sold his rights in both the items of property, that is in the properties mentioned in lists A and B to a man named Brij Mohan. Under this sale, therefore, Jageshwar transferred the property itself in list A, but only the equity of redemption in respect of the property mentioned in list B. Brij Mohan, in his turn, made a mortgage of his rights in favour of one Dwarka Prasad. It must again be clearly understood that the mortgage was a mortgage of the property itself with respect to a portion of the property and of the equity of redemption with respect to another portion. Finally on

28th May 1938 Brij Mohan sold all his rights to the plaintiff, who is the son of Dwarka Prasad. The plaintiff brought his suit in the Court of the Munsif of Shahganj at Jaunpur on 2nd June 1938. Along with the fixed rate tenancy he also claimed possession of a number of miscellaneous-trees. The defence with which we are concerned today, was that the civil Court had no jurisdiction to try the case. The learned Munsif, Mr. R.P. Saxena, by his judgment of 12th February 1940 held that the claim was not cognizable by the civil Court and dismissed the suit. This, in my opinion, was too drastic an order to pass because the proper order which the learned Munsif should, once he held that he had no jurisdiction, have passed was to return the plaint for presentation to the proper Court. The propriety of this order, however, is not the subject of controversy before me and need not detain us.

2. On appeal Mr. Kunwar Bahadur the learned Civil Judge held that if Brij Mohan never obtained possession under his sale of 4th June 1926, his cause of action accrued at a time when the old Tenancy Act was in force and a dispute of this character was cognizable by the civil Court. He, however, did not arrive at any definite finding and sent down the following issues to the learned Munsif : 'Whether the defendants dispossessed the plaintiff from the disputed property? If so, on what date? Whether Brij Mohan was not given possession at all on foot of the sale deed dated 4th June 1926?' The finding of the learned Munsif, Mr. Saxena, on the issue was to the following effect : '(a) Plaintiff was never in possession. Hence there was no question of dispossession, (b) Brij Mohan did not get possession at all either over the land or over the trees.' On the matter coming for final decision before the learned Additional Civil Judge, Mr. Sri Nath, who had succeeded Mr. Kunwar Bahadur, he held that the cause of action accrued at a time when the old Tenancy Act was in force and the suit was therefore cognizable by the civil Court. In this view of the matter he allowed the appeal and remanded the case to the Court of first instance for trial according to law. It has, been argued before me that the property in dispute consists of fixed rate tenancy and also of certain miscellaneous trees and that, so far as the former is concerned, the suit is certainly cognizable by the revenue Court, and to that extent the trial of the suit by the civil Court, would be beyond its jurisdiction. Reliance is placed for this proposition on the case in Sheo Shankar v. Sangram Singh : AIR1938 All259 . On a careful consideration of that case it appears that the facts of that case are

distinguishable from those of the case in hand. On the other hand, the facts of the present case come within the dictum laid down in *Sukhdeo v. Basdeo* : AIR1935 All594 . In that case Iqbal Ahmad J. as his Lordship then was, who delivered the judgment, laid down certain principles, which fully apply to the facts of the present case. Said his Lordship : 'The question however remains whether the civil Court has jurisdiction to entertain a suit which is based on a cause of action that entitles the plaintiff not only to a mere declaration of his right to certain tenancy holdings, but also to other reliefs which cannot be granted by the revenue Courts.... It cannot be disputed that civil Courts have exclusive jurisdiction to try all suits of civil nature, unless their cognizance is either expressly or impliedly barred.'

3. The decision in that case really appears to be that where the dispute partly relates to rights with respect to which the revenue Court cannot grant relief, the civil Court is the only forum. In this case the revenue Court could have granted relief with respect to the fixed rate tenancy; but it could not grant any relief with respect to the miscellaneous trees. It is therefore clear that the revenue Court could not grant adequate relief to the plaintiff. The case, therefore, clearly falls within the principle laid down in *Sukhdeo v. Basdeo* : AIR1935 All594 , and the argument of the learned Counsel for the appellants that the claim was cognizable by the revenue Court alone must, therefore, be rejected. The case on which the learned Counsel for the appellants has taken his stand, namely *Sheo Shankar v. Sangram Singh* : AIR1938 All259 , is itself authority for the proposition that when a party never obtained possession under a sale deed, his cause of action must be deemed to accrue on the date of the sale itself. In this case the cause of action must, therefore, be deemed to have accrued on 4th June 1926 when the Act of 1926 was in force and a suit of this character must, as said above, under the Tenancy Act of 1926 lie in the civil Court alone. I, therefore, agree with the learned Additional Civil Judge in holding that the civil Court was the proper forum for the adjudication of the rights of the parties. I accordingly dismiss this appeal with costs.