

Wali Mohammad and ors. Vs. Taqi and ors.

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SooperKanoon Citation : sooperkanoon.com/457039

Court : Allahabad

Decided On : Oct-30-1957

Reported in : AIR1958All403

Judge : B. Mukherji, ;Randhir Singh and ;J.K. Tandon, JJ.

Acts : Tenancy Law; Uttar Pradesh Tenancy Act, 1939 - Sections 180; Uttar Pradesh Tenancy (Amendment) Act, 1947 - Sections 3(23)

Appeal No. : Second Appeal No. 243 of 1949

Appellant : Wali Mohammad and ors.

Respondent : Taqi and ors.

Advocate for Def. : B.K. Dhaon, Adv.

Advocate for Pet/Ap. : K.S. Varma and ;Baldeo Sahai Srivastava, Adv.

Disposition : Appeal dismissed

Judgement :

Randhir Singh, J.

1. This is a plaintiff's appeal arising out of a suit instituted by the plaintiff appellant for the recovery of possession of two plots Nos. 232 and 233, in village pure Hiranman, pergana and district Pratapgarh, on the allegations that the plaintiff was

a tenant of the plots in dispute and that the defendants had taken wrongful possession of these plots in April, 1947. The suit was instituted on the 9th May, 1947. The defendants contested the suit. They admitted that the plaintiff was a tenant of the plots in dispute, but contended that they were co-tenants along with the plaintiff in possession of the plots.

In the alternative they pleaded that they had obtained tenancy rights by adverse possession. The trial court decreed the claim in respect of plot No. 233 but rejected the claim for possession of plot No. 232 on the ground that the defendants had acquired tenancy rights in this plot under Section 180 (2) of the U. P. Tenancy Act. The plaintiff then went up in appeal. The lower appellate Court came to the conclusion that the suit in respect of the plot No. 232 could not be instituted in the Civil Court as the defendants were in permissive possession of that plot -- a fact which was admitted by the plaintiff, presumably, before the lower appellate Court. The appeal was consequently dismissed by the lower appellate Court and the plaintiff has come up in second appeal

2. This appeal came up before one of us sitting singly and it was pointed out that the only question which was to be decided was whether the suit, which was pending in the Court of the Munsif, Partabgarh, in June 1947, should have been transferred to, and heard and decided by, the Revenue Court, on account of the amendment made by Act X of 1947. As there was divergence of judicial opinion on this point it was thought fit that this case should be referred to a Pull Bench. It appears, however, that the question, for the decision of which mainly this appeal was referred to the Full Bench, did not really arise in this appeal. It was pointed out, it seems, by the learned Counsel for the parties that the question of jurisdiction was the main point, but on an examination of the case it appears to us now that there is another point on which this appeal can be disposed of without going into the question whether it was the Civil Court or the Revenue Court which had jurisdiction to hear the case after the amendment of the U. P. Tenancy Act, made by Act X of 1947. This suit was instituted on 19-5-1947, & if the suit as framed was within the exclusive jurisdiction of the Revenue Court even before the amendment, the amendment made by Act X of 1947 would have no effect, as the suit could not be entertained by the Civil Court even before the amendment.

3. In the present case the plaintiff had come to Court on the allegation that the defendant had wrongfully taken possession of the plots in April, 1947, but during the course of the trial it transpired that this allegation of fact made by the plaintiff was not correct and that the defendants had been in possession for a number of years before the suit was instituted. The plaintiff also, it appears, conceded before the lower appellate Court that the possession of the defendants on plot No. 232 was permissive. In view of this statement we have to find out whether the suit in respect of plot No. 232 could, even before the amendment made by Act X of 1947, be entertained by the Civil Court. Reliance has been placed on a decision of the erstwhile Chief Court reported in *Ori Lal v. Ganeshi*, AIR 1947 Oudh 104 (FB) (A) in which a similar question of jurisdiction arose, and the view taken by that Court was that the word 'tenant', used in Section 180 in the expression, 'without the written consent of the person entitled to admit him as tenant' did not include a sub-tenant. A tenant has been denned in the U. P. Tenancy Act in Section 3 (23), and the definition is as follows:

' 'Tenant' means the person by whom rent is, or but for a contract express or implied would be, payable and, except when the contrary intention appears, includes a sub-tenant, but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a rent-free grantee, a grantee at a favourable rate of rent or, except as otherwise expressly provided by this Act, an under-proprietor, a permanent lessee or a thekadar'.

A sub-tenant would, therefore, be included within the meaning of the word 'tenant' for the purposes of the Act unless a contrary intention appears from the context where the word is used. The learned Judges who decided the case referred to above in AIR 1947 Oudh 104 (PB) (A) have relied, in attributing a 'contrary intention' referred to, in the definition of the word 'tenant' on other - provisions of the Act and have also taken some hypothetical cases to illustrate the meaning of the word 'tenant' in the context in which it has been used in Section 180 of the U. P. Tenancy Act. With great respect to the learned Judges who decided that case we find ourselves unable to agree with the reasons given in the judgment for coming to the conclusion that the word 'tenant' does not include a sub-tenant, and we are of the opinion that the word 'tenant' does include a sub-tenant & there is

nothing in the wording of Section 180 or in the context in which the word 'tenant' has been used to indicate that the word 'tenant' does not include a sub-tenant.

4. In the present case the defendants were not trespassers, inasmuch as, the plaintiff himself admitted that the defendants were holding the land with his permission. A person who holds land with the permission of the person entitled to admit him to tenancy of land would be entitled to maintain a suit for the ejectment of such a person under Section 180 of the U. P. Tenancy Act (sic) and the cognizance of any suit, which was within the purview of Section 180 of the U. P. Tenancy Act, by any other court except the Revenue Court was barred by the provisions of Section 242 of the Uttar Pradesh Tenancy Act. The suit therefore in respect of plot No. 232' could only be maintained in the Revenue Court even on the date when the suit was instituted and before the amendment of Section 180 of the U. P. Tenancy Act was made by Act, X of 1947. The view taken by the lower appellate Court on this point was therefore correct and no question as to whether the jurisdiction was altered by the Amending Act would arise in this case.

5. The learned Counsel for the appellant has also urged that the lower Court, even if it had come to the conclusion that the suit in respect of plot No. 232 could not be maintained in the Civil Court, ought to have returned the plaint for presentation to the proper Court. The suit was in respect of two plots and a decree was passed for the recovery of possession of one of the plots. The plaint could not therefore be returned even if it was found that a separate suit for possession of plot No. 232 should have been instituted in the Revenue Court and the only course open to the Court below was to have rejected the claim in respect of plot No. 232. It was no doubt open to the plaintiff to have made an election and to have asked the Court for permission to withdraw the suit in respect of plot No. 232 with liberty to file a fresh suit, but this course was not adopted.

6. In view of the finding given above, the question as to whether the suit should have been transferred to the Revenue Court for decision after the amendment or could be heard by the Civil Court in which it was instituted did not arise and need not be decided.

7. As a result the appeal fails and is dismissed with costs.

