

Bihari and anr. Vs. Sheobalak

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SooperKanoon Citation : sooperkanoon.com/458005

Court : Allahabad

Decided On : May-30-1907

Reported in : (1907)ILR29All601

Judge : Griffin, J.

Appellant : Bihari and anr.

Respondent : Sheobalak

Judgement :

Griffin, J.

1. The plaintiffs sued for proprietary possession of plot No. 916 on the allegation that they and defendant were members of one family; that on a partition the plot in suit was assigned to the plaintiffs' share; that in July 1904 they applied for mutation of names in respect of this plot, but their application was rejected. The defendant pleaded his own title and also that the present suit was not maintainable, in view of the fact that on the 4th of November 1904 he had obtained a decree from a Revenue Court for the ejectment of the plaintiffs as his tenants of the plot in suit. It is found by the lower Court that in the ejectment suit the defendants did not plead their own title to the plot in suit, and in fact they did not oppose the suit for ejectment. The learned Subordinate Judge has held that as the plaintiffs omitted to set up their title in a former suit, they are now precluded from maintaining the suit. In second appeal it is strenuously contended on behalf of the

plaintiffs appellants that the provisions of Section 13 of the Code of Civil Procedure are not applicable to the present case, inasmuch as the Revenue Court which decided the ejectment suit had not jurisdiction to try the present suit for title, and it is pointed out that in the ejectment suit no question of title was raised, and it is urged that the provisions of Section 199 of the Tenancy, Act do not apply. I have been referred to the following rulings: Rani Kishori v. Raja Ram Weekly Notes, 1904, p. 109 and Ashraf-un-nisa v. Ali Ahmad Weekly Notes, 1904, p. 141. These rulings were passed upon cases under Act XII of 1881. A comparison of Section 199 of the Tenancy Act with Section 208(a) of Act XII of 1881 shows that there has been an important alteration in the law, inasmuch as under the Tenancy Act a Revenue Court is empowered to determine a question of title in cases where the defendant pleads he is not a tenant. In view of this change in the law, I cannot regard the rulings just quoted as entirely applicable to the present state of things. Similarly in Inayat Ali Khan v. Murad Ali Khan (1905) I.L.R., 27 All., 569 the decision which it was said operated as res judicata had been also passed under the former Act No. XII of 1881. In Salig Dube v. Deoki Dube Weekly Notes, 1907, p. 1 which was under the present Tenancy Act of 1901, the defendants pleaded that they were not tenants, but had proprietary rights in the land. The Revenue Court under the provisions of Section 199 of the Act determined the issues thus raised itself, and decided as to one of the defendants, that he was a tenant of the plaintiffs; and this decision became final. It was held that the decision of the Revenue Court was a bar to the institution by this defendant of a suit in a Civil Court claiming to recover possession of the same land as proprietor. The principle of this decision was followed in another case decided by the same Bench of this Court, namely, Beni Pande v. Raja Kausal Kishore Prasad Mal Bahadur (1907) I.L.R., 29 All., 16. The present case is distinguishable from these latter reported cases, inasmuch as the then defendants omitted to raise any plea in the Revenue Court that they were owners, not the tenants, of the plot in suit. The question for decision therefore is, have they by their omission to plead their proprietary title in the suit for ejectment precluded themselves from suing in the Civil Court to establish their proprietary title? For the appellants it is contended on the authority of the Privy Council ruling in Gokul Mandar v. Pudmanund Singh 1(1902) I.L.R., 29 Calc., 7 07 that the provisions of Section 13 of the Code of Civil Procedure must

be strictly construed. The passage in their Lordships' judgment to which I have been particularly referred occurs at page 715. I need only observe that the remarks of their Lordships were obiter. I am unable to infer from these observations that their Lordships, if dealing with a case under the Tenancy Act, would hold that the decision of a Revenue Court under Section 199 of the Tenancy Act could not operate as *res judicata*. The claim which the plaintiffs now make, that they are owners of the plot in suit, is clearly a plea which might and ought to have been raised by them in their defence to the ejectment suit. If they had raised that plea, the Revenue Court might under the provisions of Section 199 of the Tenancy Act, have determined the question itself or required the defendant to institute a suit for determination of the question of title. In my opinion the learned Subordinate Judge was right in holding that the present suit was not maintainable. I dismiss this appeal with costs.