

Mewa and ors. Vs. Baldeo

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Court : Allahabad

Decided On : Aug-12-1966

Reported in : AIR1967All358

Judge : B. Dayal and ;D.D. Seth, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9; Tenancy Laws; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 - Sections 331

Appeal No. : Civil Revn. No. 912 of 1964

Appellant : Mewa and ors.

Respondent : Baldeo

Advocate for Def. : Sankatha Rai, Adv.

Advocate for Pet/Ap. : K.P. Singh, Adv.

Disposition : Petition dismissed

Judgement :

B. Dayal, J.

1. This civil revision has been referred by a learned single judge of this Bench on account of an apparent conflict between two Division Bench eases of this Court.

2. The facts which have given rise to this revision may shortly be stated. The plaintiff filed a suit in the civil court for cancellation of a sale deed on ground of fraud. He claimed that he was in possession of the property but in the alternative also prayed that If the opposite party was found in possession a decree for delivery of possession may also be passed. The defendants raised an objection to the maintainability of the suit in the civil court. The trial court, therefore, framed issue No. 4 on the question of jurisdiction and decided that issue holding that the court had jurisdiction to entertain the suit. In this case the question before the learned single judge was:

'Whether a suit in which cancellation of a document is in issue along with the relief for possession, lies before the civil court or by virtue of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act before the revenue court only?'

3. The learned single judge thought that there was a conflict between the decisions of this Court contained in *Uma Pandey v. Purshottam*, 1960 All L. J. 676 and *Mukteshwari Prasad Tewari v. Ram Wall*, 1965 All L. J. 1137. The learned single judge went on to observe that it was not difficult to distinguish those cases on facts and to lay down a law in the present case but the public and the bar find it difficult to reconcile the conflicting decisions and, therefore, he thought it necessary to get an authoritative decision.

4. We have heard learned counsel in great detail and although for the purposes of this case it is not necessary to go into all the aspects of the matter which will be considered in this judgment we have considered it proper to express our opinion on all those questions.

5. It is well settled that every suit of a civil nature lies in a civil court unless it is expressly barred by statute. What has therefore, to be seen is, what is the bar created by the U. P. Zamindari Abolition and Land Reforms Act in respect of such suits which would normally be filed in civil courts. The only bar that exists in the U. P. Zamindari Abolition and Land Reforms Act is Section 331. The relevant part of the section which creates the bar is in the following words:

"No court other than the court mentioned in column 4 of Schedule II shall
..take cognizanceof a suit, application or proceedings based on a cause of
action in respect of which any relief could be obtained by means of any such suit
or application'

6. In substance, therefore, the bar exists where a suit is filed in a civil court which is based upon a 'cause of action' in respect of which cause of action the plaintiff could get any relief by a proceeding in the revenue court. Therefore, the primary important thing to be observed in each case filed in civil court is, where an objection is raised as to its maintainability in a civil court, as to what is the cause of action for it and whether on the basis of that cause of action any relief can be granted by the revenue court. If the cause of action is one in which the revenue court can give no relief then the suit is one which would lie in the civil court. If the cause of action is one in respect of which no relief can be claimed in the revenue court then the suit is maintainable in the civil court and once the suit is maintainable in the civil court then there is no bar in civil court granting all possible reliefs flowing from that cause of action. Consideration of individual reliefs divorced from cause of action is, therefore, wholly irrelevant.

7. Applying this principle to the present case we find that the cause of action in the present case is that the plaintiff was, under fraudulent circumstances, induced to execute a sale deed of this property in favour of the defendants and the plaintiff wants that that sale deed be cancelled and his property be restored to him. In these circumstances the real cause of action of the plaintiff is the fraudulent act in obtaining the sale deed. The sale deed having been executed by the plaintiff himself, on account of fraud, as alleged by him, is only a voidable document and is, therefore, valid and binding upon the plaintiff as long as it is not set aside. The title which has passed from the plaintiff to the defendants would continue to vest in the defendants as long as the sale deed is not cancelled and obviously as long as the sale deed is not cancelled no relief can be granted to the plaintiff either by way of declaring his title, because he has no title, or of delivering of property as long as he does not get back his title which he has sold by sale deed *Janki Kunwar v. Ajit Singh* (1888) ILR 15 Cal 58 (PC). In these circumstances the revenue court can give no relief as long as the sale deed is not cancelled. It was contended on behalf

of the defendants that the revenue court can give a declaration that the plaintiff is the owner because the sale deed was executed by fraud and the revenue court could also give possession. As stated above neither declaration nor possession can be given to the plaintiff as long as the sale deed is not cancelled.

8. It may be noted here that position would have been very different if the document which was sought to be cancelled was a document void ab initio, for instance, if it had been executed by the plaintiff while he was a minor. Then the document being completely void it would not have been necessary to avoid it and in that case he could, merely by proving that it was a void document, get a declaration of his title to the property or even possession without cancellation of the sale deed. It was possible for the revenue court in those circumstances to look into the facts and after coming to the conclusion that the sale deed was completely void and ineffectual to pass title to the transferee could have given a declaration or could have also decreed possession in favour of the plaintiff. But in cases where avoidance of a document is necessary the position is different.

9. In *Man Singh v. Khachera* 1957 All W. R. 41 a Division Bench of this Court had to consider a case where the plaintiff wanted to set aside a compromise decree granted by revenue court on the ground of undue influence and coercion and also for possession of the land. In the case the lower court had held that the suit was maintainable in the revenue court. In this connection the learned Judge observed as follows:

'The question, therefore, as to which of the reliefs claimed is the main relief will depend upon the particular circumstances of each case. The circumstances in the present case, according to the plaintiff, are that in the previous suit he had obtained a decree against the defendants. That decree, according to the plaintiff, was *res judicata*. There was, however, a hurdle in the way of his obtaining possession. That hurdle lay in the compromise decree which had been passed against him, and which, according to him, was vitiated by undue influence and coercion. He was himself a party to the said decree. The decree was, therefore, voidable. The cancellation of the said decree was, therefore, a condition precedent to any further relief that he could have obtained in the suit ...

Considering these two features of the present case, we are clearly of opinion that the main relief in the present case was one of cancellation of the decree and the relief of possession was merely a consequential relief that flowed from the granting of the main relief.'

10. Accordingly the judgment of the court below was set aside and the case was sent back to the court with a direction that the case be heard and tried on merits.

11. Similarly before another Division Bench in 1960 All L. J. 676 where the main relief in the suit was for a declaration that the consent decrees obtained from the revenue court were ineffectual, it was held that the revenue court will have no jurisdiction to entertain such a suit which will lie in the civil court in spite of the ancillary relief contained in the plaint for possession of the land.

12. We may note here that in both these cases, the relief of avoidance of the decree was considered the main relief because upon the cause of action no other relief could be granted unless the decree was avoided. As against this, our attention was drawn to two earlier Division Bench cases, namely, *Mt. Ram Kuer v. Iqbal Narain Singh*, AIR 1947 All 92 and *Ram Sewak Lal v. Bashist.* : AIR1949 All419 . In none of these cases, it was argued that a declaration of title of possession could not be granted unless the decree or the document was set aside and the learned Judges proceeded upon the footing that the real purpose of the suit was to get a declaration of title or possession. We need not examine the facts of these cases in detail for the principle has clearly been laid down in subsequent Division Bench cases mentioned above and we respectfully agree with the same.

13. For purposes of this particular case, this was enough to hold that the decision of the court below is right, if the document in question is only a voidable document and not void ab initio. It has not been argued before us that it was not voidable only. We must, however, add that the basis upon which the court below seems to have proceeded, namely, that the revenue court was not competent to grant all the reliefs claimed in the suit and therefore, the suit lay in the civil court, was not the proper basis to decide the issue.

14. We now proceed to consider the cases relating to the injunction for demolition of the construction and for possession over the land on which the construction has been made. In this respect, there is a conflict of decisions made under the U.P. Tenancy Act and that under the U.P. Zamindari Abolition and Land Reforms Act. The reason for this conflict was shortly stated in our judgment in 1965 All LJ 1137, the main reason being that the provisions of the U.P. Tenancy Act were materially different from those of the U.P. Zamindari Abolition and Land Reforms Act and consequently the considerations which weighed in deciding the cases under the U. P Tenancy Act are no more applicable to the cases under the U.P. Zamindari Abolition and Land Reforms Act and under the new Act, as it stands, such a suit would lie in the revenue court. Since the reasons shortly stated in that case do not appear to have been properly understood, we proceed to give our reasons more elaborately.

15. Under the U. P Tenancy Act, the word 'land' was defined in Section 3 (10) and in the definition it was clearly provided. 'But does not include land for the time being occupied by buildings or appurtenant thereto other than building which are improvements'. The result of this definition was that as soon as land, which was hitherto agricultural land, was covered by buildings and land appurtenant to such buildings, it ceased to be land automatically Section 180 of the U P Tenancy Act related to ejectment of trespassers from land, i.e., land let or held for agricultural purpose. Therefore, if the suit was filed against a person on the allegation that he had built upon the land and it was necessary to remove this construction, the suit could not be covered by Section 180 of the U. P. Tenancy Act and it would, therefore, lie in the civil court. Moreover, in Section 180 U. P. Tenancy Act, there was Sub-section (2) which provided that if no suit was filed under the section or if the decree obtained under the section was not executed within time, the trespasser would become a hereditary tenant if he was not a co-sharer. In view of this Sub-section (2) added to Section 180, which did not exist under the corresponding Section 44 of the Agra Tenancy Act, it was held by a Full Bench of this Court in D.N. Rege v. Quazi Muhammad Haidar : AIR1946 All379 , that the intention of the legislature by adding Sub-section (2) was clear and it was that suits under Section 180 of the U P. Tenancy Act could be filed against those trespassers only, who took possession of the land and claimed tenancy rights in it.

Under the Agra Tenancy Act, the Civil Court and the Revenue Court were held to have concurrent jurisdiction and it was practically the sweet-will of the plaintiff to file a suit against the trespassers either in the civil court or in the revenue court. But because of the addition of this Sub-section (2), the Full Bench held that the legislature had made its intention clear that against the trespasser who claimed proprietary rights, the suit would lie in the civil court and against the trespasser who claimed tenancy right, the suit would lie in the revenue court. In this Full Bench case, the language of Sub-section (1) of Section 180 was not at all taken into consideration for coming to this conclusion. Admittedly the language of Sub-section (1) is wide enough to include all kinds of trespassers but it was Sub-section (2) which in the view of their Lordships made all the difference. After the decision of that Full Bench case, there was a slight amendment in Sub-section (1) of Section 180, by which the word 'tenant' was removed from the phrase 'without the consent of the person entitled to admit him as tenant' and was substituted by the words 'without the consent of the person entitled to admit him to occupy such plot'. It was contended that by this change in Sub-section (1), the decision of the Full Bench case had become absolute. After this amendment it is pressed that every suit against all kinds of trespassers whatever be their claim, became entertainable by the revenue court. But we see nothing in this argument whatsoever. The phrase quoted above, defines the person without whose consent the trespasser has taken possession. The phrase 'person without whose consent possession has been taken' has been enlarged, no doubt by alteration, but it has nothing to do with the claim made by the trespasser. This alteration in the phrase was necessary because under the previous phrase, it was argued that only a landlord can file a suit against a trespasser under Section 180 because he alone can admit a person to tenancy and a tenant could not file a suit under that section because he could not admit a tenant. Therefore suits by tenants against independent trespassers (not claiming through the landlord) were held to lie in the civil court. It was thought that this was unnecessary and therefore, the phrase was altered so that after the amendment tenants also were entitled to file a suit against the trespassers. This amendment to our mind, therefore, did not affect the reasoning which was accepted by the Judges constituting the Full Bench. We, therefore, relied upon this Full Bench case and stated in *Mukteshwari Prasad's case* 1965 All

LJ 1137 that under the U. P. Tenancy Act, a suit against the trespasser, who had made construction over the land was rightly held to lie in the civil court but these considerations now do not arise under the U. P. Zamindari Abolition and Land Reforms Act. Under the present Act, in the definition of the word 'land' and in Section 3 (14) only first part of the definition has now been re-enacted in the following words:

'Land', except in Sections 143 and 144. means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisci culture and poultry farming.'

There is no provision now for land automatically ceasing to be 'land' if it is covered by buildings. On the contrary an elaborate provision has been made in Section 148 onwards whereby land ceased to be land only after a declaration has been made to that effect by the Collector and this declaration is to be sent and registered by the Registrar under the Registration Act. Under the U. P. Zamindari Abolition and Land Reforms Act, therefore, land remains land until that declaration is given and the mere act of a trespasser in constructing the building without any right does not change the nature of land and the suit will continue to be governed by Section 209 of the U. P. Zamindari Abolition and Land Reforms Act. Moreover, under Section 209 of the said Act, there is no clause like Sub-section (2) of Section 180 so that there is nothing in Section 209 which would curtail the general language of the section as there was in Subsection (2) of Section 180 which cut down the scope of Section 180 (1).

16. We may also by the way mention here that if the second part of Section 180 was not interpreted as restricting the scope of the first part the result would have been that there would be repugnancy in several sections of the U. P. Tenancy Act, e.g. if a trespasser occupied a grove land as grove holder and no suit was brought against him within the limitation prescribed under Section 180, Sub-section (2) provided that he shall become a hereditary tenant but Section 30 of the U. P. Tenancy Act provided that the hereditary tenancy shall not arise in grove-land. Thus there would be repugnancy between Sub-section (2) of Section 180 and Section 30. Another repugnancy was pointed out by the Full Bench that a person

claiming full proprietary rights would be deemed to have acquired only hereditary right although he never claimed it and their Lordships elaborately pointed out how that position was untenable. These difficulties now do not arise in the U. P. Zamindari Abolition and Land Reforms Act because under Section 210 if no suit is brought within limitation, under Section 209, then sirdari rights arise only in land which is held by a bhumidbar and there is no provision in the Act that sirdari rights cannot arise in any holding of a bhumidhar. Moreover, under the U. P. Zamindari Abolition and Land Reforms Act, nobody can claim proprietary rights because all the land now vests in the Government and even bhumidhars are mere tenure-holders. We are, therefore, of the opinion that the cases decided under the U. P. Tenancy Act in which it was held that the suit against a trespasser lies in the civil court because he had constructed buildings over the land and it was necessary to demolish the buildings, have no application to the provisions of the new Act.

17. Here another argument may also be considered Learned counsel contended that in a case where buildings had been constructed and a mandatory injunction directing demolition of the buildings to the defendant was a primary and necessary relief to the plaintiff which could not be granted by the revenue Court, it was proper that these cases should still go to the revenue court. We are unable to see any force in this contention. When a trespasser makes any construction without a right upon the land of another person, he thereby gets no right in the land and also loses all rights in the materials which he fixes to the land of another. These materials became a part of the land itself and belonged to the owner of the land. The plaintiff in such a case is entitled to obtain possession of the land, as it is, along with the building, if necessary. Of course, the defendant has a right to take away his materials when a decree for possession is granted against him but if he does not take away the materials, it is the right of the plaintiff-decree holder to take possession of the land, as it is, and thereafter to throw away the material himself so that the right to remove the material became vested in himself and he does not need the assistance of the court any more. In such a case, the cause of action for the plaintiff is his dispossession and therefore, the relief in such cases would be a relief of possession which the revenue courts, as mentioned above, can now give under the U. P. Zamindari Abolition and Land Reforms Act. The relief for demolition would be merely ancillary and an unnecessary relief and on account of

such a relief, therefore, it cannot be said that the cause of action is such on which the revenue courts cannot grant any relief within the meaning of Section 331 of the U. P. Zamindari Abolition and Land Reforms Act. That being so, such a suit would be barred from being filed in the civil court.

18. For the reasons mentioned above, we do not see any conflict between the two decisions of Uma Pandey, 1960 All LJ 676 which was a case of cancellation and Mukteshwari Tewari, 1965 All LJ 1137 which was a case of possession with a prayer for demolition of the buildings.

19. In short, the history of the legislation with regard to these suits against trespassers has been that upto the Agra Tenancy Act the civil court and the revenue court had concurrent jurisdiction while under the U. P. Tenancy Act, the civil court had jurisdiction against the trespassers who did not claim tenancy rights and the revenue court had jurisdiction against the trespassers, who claimed tenancy right, while under the U. P. Zamindari Abolition and Land Reforms Act, all suits against the trespassers on agricultural land now lie in the revenue courts with the exception of cases where possession cannot be granted unless some other relief has been obtained from the civil court which the revenue courts are incapable of granting.

20. In the result, therefore, the present case being one for cancellation of the sale deed, the suit has been rightly held to be maintainable in the civil court. There is no force in this revision. It is accordingly dismissed with costs.

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