

Ramesh Chandra Vs. Kanchan

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Court : Allahabad

Decided On : Nov-11-1949

Reported in : AIR1950All340

Judge : Seth, J.

Acts : Tenancy Law; Uttar Pradesh Tenancy Act, 1939 - Sections 265(3)

Appeal No. : Second Appeal No. 1429 of 1946

Appellant : Ramesh Chandra

Respondent : Kanchan

Advocate for Pet/Ap. : K.C. Saksena, Adv.

Disposition : Appeal dismissed

Judgement :

Seth, J.

1. This appeal arises out of a suit brought Under Section 172, U. P. Tenancy Act The suit was defended, inter alia, on the ground, that the revenue Court had no jurisdiction to entertain it. This plea and other pleas raised in defence were overruled and the suit was decreed.

2. Aggrieved by the decision of the Court of first instance, the defendant appealed to the lower appellate Court. The appeal was allowed and the decree of the Court of first instance was modified to this extent that the defendant was given the benefit Under Section 173, U. P. Tenancy Act. The decision of the lower appellate Court is attacked before me on one ground and one ground only, namely, that it had no jurisdiction to hear the appeal.

3. Section 265, U. P. Tenancy Act, provides that an appeal shall lie to the District Judge from the decree of an Assistant Collector of the first class in any suit included in Group 'A' of Schedule 4 in which the amount or value of the subject-matter of the appeal exceeds Rs. 50/- and Clause (3) of that section reads:

'An appeal shall lie to the District Judge from the decree of an Assistant Collector of the first class or of a Collector in all suits, in which a question of jurisdiction has been decided and is in issue in the appeal.'

A suit Under Section 172 is a suit which is included in Group 'A' of Schedule IV. Unless, therefore, a case is covered by Clause (3) of the section an appeal from the decree of an Assistant Collector of the first class in such a case does not lie to the District Judge. It is undisputed that a plea of jurisdiction was raised by the defendant in this case in the Court of first instance and was also repeated before the lower appellate Court. The contention of the learned counsel for the appellant, however, is that this plea was a mere eyewash and not the plea of jurisdiction contemplated by Section 265 (3), U. P. Tenancy Act. His contention is, that the plea of jurisdiction should be a plea to the effect that, on the facts alleged in the plaint, the Court has no jurisdiction, and he submits that the Full Bench decision of this Court in *Gokaran Singh v. Ganga Singh*, 17 A. L. J. 1072 : (A. I. R. (7) 1920 ALL. 229 F. B.) supports this contention.

4. I have very carefully considered the judgment of the Full Bench, and I do not find anything in that case to support the contention of the learned counsel. It was contended in that case, that a futile plea of jurisdiction was not a plea contemplated by the corresponding section of the Tenancy Act then in force. Three previous decisions were noticed in that case. The first case noticed was *Deo Narain v. Sitla Bakhsh*, 40 ALL. 177: (A. I. R. (5) 1918 ALL. 84), in which it

was observed:

'It would be reducing matters to an absolute absurdity to hold that the defendants in a revenue suit could by formally raising an absolutely untenable plea of jurisdiction, take every case from the revenue Court to the civil Court'

and in which it was held that where a plea of jurisdiction was raised, which could not properly be raised, an appeal did not lie to the District Judge. This view was dissented from in *Damodar Das v. Jhaoo Singh*, 15 A. L. J. 319: (A.I.R. (4) 1917 ALL. 295), where it was held that Section 177 Agra Tenancy Act of 1901 is plain and unambiguous, and it lays down that an appeal lies to the District Judge in all suits in which a question of jurisdiction has been decided irrespective of the fact whether that question has been properly decided or not, and that there was no warrant for reading into the section any word which did not exist there.

5. The third case noticed was *Umrai Singh v. Ewaz Singh*, 41 ALL. 270: (A. I. R. (6) 1919 ALL. 267), in which a Letters Patent Bench confirmed the decision of Piggot J. which followed *Deo Narain v. Sitla Bakhsh*, 40 ALL. 177: (A. I. R. (5) 1918 ALL. 84) without noticing *Damodar Das v. Jhaoo Singh*, (15 A. L. J. 319: A. I. R. (4) 1917 ALL. 295) (*ubi supra*). The decision of Piggot J. which was approved by the Letters Patent Bench was to the effect, that in determining whether a plea of jurisdiction contemplated by Section 177, Tenancy Act of 1901 was raised or not, what has to be considered is, whether the plea amounts to this, that, on the facts alleged in the plaint, the Court has no jurisdiction, or whether the plea is that, if the facts alleged by the defendant are taken into account, the Court will be found to have no jurisdiction. The learned Judge expressed the opinion, that if the plea of jurisdiction is of the former description, it is a plea contemplated by the section, but not if the plea is of the latter description.

6. The Pull Bench in *Gokaran Singh's case*: (17 A. L. J. 1072: A. I. R. (7) 1920 ALL. 229 F. B) (*ubi Supra*) consisted of three learned Judges, Banerji, Rafiq and Piggot JJ. Rafiq J., did not deliver any separate judgment, but only concurred in the opinion given by Banerji J. Banerji J., after pointing out that the view adopted by Piggot J., in *Umrai Singh v. Ewaz Singh*, 41 ALL. 270: (A. I. R. (6) 1919 ALL. 267) seemed to him to be right, observed that the test laid down in *Umrai Singh's*

case: (41 ALL. 270: A.I.R. (6) 1919 ALL. 267) was satisfied in the case with which he was dealing. The observations contained in Umrai Singh's case : (41 ALL. 270 : A. I. R. (6) 1919 ALL. 267), (ubi supra) were clearly explained by Piggot J., in his judgment in this Full Bench case. He said :

'At the time when I pronounced that decision neither of the other two cases, to which we have been referred, namely, Deo Narain v. Sitla Baksh (40 All. 177: A. I. R. (5) 1918 All. 84) or Damodar Das v. Jhaoo Singh'. (15 A. L. J. 819: A. I. R. (4) 1917 All. 295) had yet been reported. I referred to the former of the two as an unreported case, and my principal reason for adding these remarks at this stage in the present case is I think that I made a mistake in doing so. My ratio decidendi in Umrai Singh v. Ewaz Singh: (41 All. 270: A. I. R. (6) 1919 All. 267), which was apparently accepted by the learned Judges before whom the case came in appeal, was really different from that in Deo Narain v. Sitla Bahsh: (40 All. 177: A. I. R. (5) 1918 All. 84). 'The question, as I looked at it, and as I still regard it, is one of interpreting the words 'a question of jurisdiction' in Section 177 (f), Agra Tenancy Act. I take those words to mean a plea by the defendant to the effect that, on the facts alleged by the plaintiff himself the suit is not one which a Revenue Court has jurisdiction to entertain. Obviously, it is open to a defendant to deny the facts alleged in the plaint, to set a different state of facts and plead that, upon the facts alleged by himself, the Revenue Court could not lawfully eject him or grant the plaintiff whatever other relief the plaintiff was seeking from that Court. This however is not, In my opinion, a plea of jurisdiction within the meaning of the subsection above referred to. It is merely an assertion of the legal consequences which would follow upon the Court's affirming certain pleas of fact set upon by the defendant. It is so far from being a plea of jurisdiction that it pre-supposes the jurisdiction of the Court before which the said plea is raised to determine which set of facts is correct, that alleged by the plaintiff or that alleged by the defendant. A plea of jurisdiction, properly so called, is a plea that the facts as stated by the plaintiff himself are such that the Court 'before which the plaint is brought has no jurisdiction to entertain it, or to grant the relief therein sought. The other two cases, of this Court, namely, Damodar Das v. Jhaoo Singh: (15 A. L. J. 319: (A. I. R. (4) 1917 All. 295) and Deo Narain v. Sitla, Baksh, (40 All. 177: A. I. R. (5) 1918 All 84) are to a large extent in conflict, and I think it sufficient to say that I should prefer, If

the case were one which required the point to be determined, to follow the decision in Damodar Das v. Jhaoo Singh: (15 A. L. J. 319: A. I. R. (4) 1917 All. 295.).'

7. It is thus clear that Piggot J., concurred in the view expressed in Damodar Das v. Jhaoo Singh: (15 A. L. J. 319: A. I. R. (4) 1917 ALL. 295). As the judgment of Banerji J., was delivered as a member of the same Bench as a member of which the observations made in Umrai Singh v. Ewaz Singh, (41 ALL. 270 : A.I.R. (6) 1919 ALL. 267) (ubi Supra) were explained by Piggot J. as quoted above, it follows that Banerji J., accepted those observations as so explained. The Pull Bench case is, therefore, no authority in support of the proposition that a plea of jurisdiction to confer a right of appeal Under Section 265 (3), should be a plea which states in express words 'that on the allegations contained in the plaint the Court has no jurisdiction.' It is undoubtedly an authority for the proposition that the plea of jurisdiction should not be that, on the facts alleged by the defendant, the Court has no jurisdiction. This is exactly the sense in which the Full Bench case has been explained by another Division Bench of this Court in Baij Nath v. Gaya Din : AIR1934 All725 .

8. In the case, with which I am concerned in this second appeal, there is nothing to indicate that the plea of jurisdiction was of the nature which was described by Piggot, J., to be not a plea of jurisdiction at all, but to be merely an assertion of the legal consequences which would follow upon the Court's affirming certain pleas of facts set upon by the defendant. In my opinion, therefore, the lower appellate Court had jurisdiction to hear the appeal and the contention of the learned counsel is not fit to be upheld.

9. This appeal is, therefore, dismissed, but there shall be no order as to costs as the respondent is not represented. Permission for a Letters Patent appeal is asked for, but is refused.