

Ahmed Sayed Vs. Bashir Ahmed and ors.

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Court : Allahabad

Decided On : Sep-07-1948

Reported in : AIR1949All215

Appellant : Ahmed Sayed

Respondent : Bashir Ahmed and ors.

Judgement :

Bhargava, J.

1. This is a defendant's appeal, which arises out of a suit for possession over certain land by demolition of the constructions made thereon. Admittedly, the land belongs to the biradari of loharan of Nagiaa and, on 15th March 1945, the defendants had taken it for a period of three years from the panches of the biradari for making constructions thereon. On the same date, the defendant had executed a qabuliat in favour of the panches & and agreed thereunder to vacate the land on the expiry of the said period. He was entitled to make any constructions he liked; and he actually built a residential house over the land. He did not vacate the land after the expiry of the said period. Thereupon the plaintiffs, who claimed to be the panches of the biradari, instituted the suit which has given rise to this appeal. The defendant denied that the plaintiffs were the panches of the biradari. He claimed to be the licensee and pleaded estoppel and acquiescence. It was also contended on his behalf that the plaintiffs had not obtained the permission of the Court to sue on

behalf of the biradari as required by Rule 8 of Order 1, Civil P.C., and they were not entitled to maintain the suit.

2. The trial Court found that the plaintiffs were not the duly appointed panches of the biradari and were not entitled to sue without complying with the provisions of Order 1, Rule 8, Civil P.C., that the quabuliat was a fictitious document and the defendant was a licensee and the license could not be revoked; and that the suit was barred by the rule of estoppel.

3. On appeal the learned Civil Judge of Bijnor held that the plaintiffs were duly elected panches of the Uradari and that the qabuliat was binding on the defendant and in view of the terms contained therein, he was not entitled to retain possession over the land and must remove the constructions made by him. He did not enter into the question whether the suit was maintainable without complying with the provisions of Order 1, Rule 8, Civil P.C. He decreed the suit and allowed the defendant one year's time to remove the constructions.

4. In this appeal, the learned Counsel for the appellant has, in the first place, contended that the finding of the learned Civil Judge that the plaintiffs are the duly elected panches of the biradari is vitiated as he did not consider the evidence on the record. I find that in the Court below additional documentary evidence was produced and admitted; and it included the minutes of a meeting of the biradari people held on 1st April 1942, and in view of the said additional evidence, the learned Civil Judge came to the conclusion that the plaintiffs were the duly appointed panches of the biradari. He also considered the oral evidence and rejected the evidence produced by the defendant. I find that there is sufficient evidence on the record to justify the finding of fact recorded by the lower appellate Court; and there is no reason to disturb it in second appeal.

5. In the next place, the appellant's learned Counsel argued that even if the plaintiffs had been appointed panches of the biradari they were not entitled to maintain the suit without obtaining the Court's permission as required by Order 1, Rule 8, Civil P.C. The learned Counsel for the plaintiff-respondents, on the other hand, pointed out that the defendant had admittedly taken the land from the panches of the biradari and the panches, who had been authorised by the biradari

to sue on its behalf, were entitled to maintain the suit and the provisions of Order 1, Rule 8, Civil P.C., had no application.

6. Rule 8 of Order 1, Civil P.C. is as follows:

(1) Where there are numerous persons having the same interest in one suit, one or more of such may with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiffs expense, notice of the institution of the suit to all such persons either by Personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct....

The land in dispute admittedly belongs to the entire biradari. Consequently all the members Of the biradari were interested in the suit. The biradari is not a corporate body. Therefore, any suit on behalf of the biradari in a representative capacity could only be instituted by any one or some of the biradari people in accordance with the procedure laid down for such suits in Rule 8 quoted above.

7. The question, however, arises whether the appointment of the plaintiffs as panches to deal with the property and the power conferred upon them to maintain a suit on its behalf by the biradari entitled them to maintain the suit without complying with the provisions of Order 1, Rule 8, Civil P.C. The biradari having authorised the plaintiffs to deal with the property, they could do that as there was no legal bar to their doing so. But, being an unincorporate body, the authority conferred upon them by the biradari to file a suit could be enforced only subject to the provisions of law, that is to say, with the permission of the Court as the suit fell within the purview of Order 1, Rule 8, Civil P.C. In *Atma Ram Babaji v. Narayan Arjun* A.I.R. (9) 1922 Bom 109, the president of a caste authorised under a resolution passed by the managing committee of the caste elected by the community under caste rules for the management of caste properties to file suits in ejectment in his own name, filed suits with the object of ejecting certain tenants and it was there held that there being numerous members of the community, having the same interest in the suit, notice of the institution of the suit to all such persons as well as the permission of the Court was necessary for filing the suit as

provided in Order 1, Rule 8, Civil P.C. It must therefore, be held that the plaintiffs could not maintain the present suit without the permission of the Court and without observing the formalities prescribed; by Rule 8 of Order 1, Civil P.C.

8. Mr. Kazmi on behalf of the plaintiffs, has presented an application in this Court praying that his clients be allowed to sue on behalf of the entire biradari and that the suit be remanded to the trial Court for the purpose of giving notice of the institution of the suit to all the members of the biradari by public advertisement. This application is opposed on behalf of the appellants by his learned Counsel who has stated that the application has been made at a very late stage and that if it is allowed his client should be allowed the costs incurred by him in all the Courts. In the circumstances of the present case, I consider it proper to entertain the application and to send the case back for disposal according to law.

9. The appeal is, therefore, allowed. The decrees passed by the Courts below are set aside and the suit is remanded to the trial Court with a direction to readmit it under its original number for disposal according to law after taking action under Rule 8 of Order 1, Civil P.C. The appellant will receive from the plaintiffs his costs incurred by him in all the Courts irrespective of the result of the suit and the costs incurred by the plaintiffs will abide the final result of the suit.