

Rasool Ahmad Vs. Beni Prasad and ors.

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Court : Allahabad

Decided On : Oct-20-1964

Reported in : AIR1965All514

Judge : Gangeshwar Prasad, J.

Acts : Tenancy Law; Uttar Pradesh Tenancy Act, 1939 - Sections 30(2), 59, 180, 180(1), 180(2) and 242; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 - Order 7, Rule 10

Appeal No. : Second Appeal No. 4229 of 1960

Appellant : Rasool Ahmad

Respondent : Beni Prasad and ors.

Advocate for Def. : Lal Ji Sinha, Adv.

Advocate for Pet/Ap. : R.B. Misra and ;Bashir Ahmad, Adv.

Disposition : Appeal dismissed

Judgement :

Gangeshwar Prasad, J.

1. The two suits which have given rise to these appeals are the third in the series of actions raised by the plaintiff in respect of the same land and against the same

persons or their representatives in interest.

2. In 1954 Rasool Ahmad plaintiff filed a group of eight suits (hereinafter described as the 1954 suits under Section 59/183 of the U. P. Tenancy Act of 1939 in the revenue court with the allegation that he was a tenant of the land in suit but defendants Nos. 1 and 2 had got leases in respect of it executed by the remaining defendants who were the Zamindars and were interfering with the possession of the plaintiff on the strength of the said leases which were invalid and of no legal effect. The plaintiff sought a declaration that he was a hereditary tenant of the land in suit and also prayed for restoration of possession in case he was found to be out of possession. The defence was that the plaintiff was not a tenant of the land in suit and was not in possession thereof. By his judgment dated 13th May 1955 the Assistant Collector dismissed the suits with the findings that the plaintiff was neither a hereditary tenant of the land in suit nor in possession and he was not entitled to the reliefs claimed by him. The judgment of the Assistant Collector was confirmed in appeal by the Commissioner and then by the Board of Revenue. Against the judgments and decrees of the revenue courts the plaintiff filed a writ petition in this Court under Article 229 of the Constitution but it was rejected on 26th April 1958.

3. The plaintiff then filed another set of suits (hereinafter described as the 1958 suits) under Section 59/ 183 of the U. P. Tenancy Act of 1939 in the revenue court in 1958 claiming to be art occupancy tenant of the land in suit and alleging that defendants Nos. 1 and 2 were trying to dispossess them on the basis of illegal, void and ineffective leases obtained from the Zamindars. The prayer in the suits was that the plaintiff may be declared to be an occupancy tenant of the land and if possession was found with the defendants a decree for their ejectment be also passed in favour of the plaintiff. The defence was that the suits were barred by res judicata, that the plaintiff was neither a tenant of the land in suit nor was he in possession thereof, and that the Zamindars were competent to grant the leases. These suits also were dismissed by the Judicial Officer on 12th September 1957, and his decision was upheld by the Commissioner in appeal on 2nd November 1957, The plea of res judicata was accepted and it was held that the plaintiff was not entitled to declaration or possession.

4. The suits which have led upto the present appeals were commenced in the Civil Court on 11th May 1957. The allegations of the plaintiff in these two suits are that he is an occupancy tenant of the land in suit and that he has been in possession there-of for more than 50 years, but in derogation of his rights defendants Nos. 3 to 21, with the exeception of defendants Nos. 9 and 11 and 14 to 17 and 19, granted leases dated 1st November, 1954 and 4th November 1954 to defendants Nos. 1 to 2 although they were not competent to do so. As to the decrees passed by the revenue Court in 1954 suits it has been stated that they were without jurisdiction and null, void and ineffective but nothing has been said regarding the decrees passed in the 1956 suits. The reliefs claimed in the suits are that the leases dated 1st November 1954 and 4th November 1954 be adjudged void and cancelled and, further, that it may be declared that the decrees of the revenue Court in the 1954 suits are void and ineffective and not binding on the plaintiff. A permanent injunction restrainiag the defendants and their agents etc., from interfering with the plaintiff's possession has also been claimed and it has been prayed that the relief of possession be also granted in the event of the plaintiff not being found to be in possession. Defendants Nos. 1 and 2 have contested the suit. They claim to be the tenants of the disputed land, and deny that the plaintiff has any right or any interest in it. They plead that the decrees passed in the 1954 suits and the 1956 suits operate as res judicata and that the present suits are also barred by estoppel. It has been asserted by the contesting defendants that the leases in their favour are perfectly valid and the Zamindars, who executed them, were competent to do so. It has, further been stated by them that although defendants Nos. 9 and 10 had not joined in executing the leases they had made oral arrangement of the land with them. The pleas of jurisdiction and limitation were also raised. The suits were dismissed by the trial Court and the decrees of the trial Court were affirmed in appeal by the lower appellate Court. The plaintiff has now preferred these second appeals.

5. The lower appellate Court has held that the suits are barred by res judicata and estoppel and they are also beyond the cognizince of the Civil Court. It has further held that the plaintiff has no right in the land in suit and he is not entitled to any of the reliefs claimed by him.

6. Naturally the first question that calls for determination is whether the suits are maintainable in the Civil Court. It may be noted that the U. P. Tenancy Act of 1939 is applicable to the area where the land in dispute is situate and it is with reference to the provisions of Section 242 of the U. P. Tenancy Act of 1939 (hereinafter called the Act) that the question whether the suits are within the cognisance of the Civil Court has to be decided. The case of the plaintiff, as I have already stated, is that he is a tenant of the land in suit and the object intended to be achieved by the suits obviously is the establishment of his rights as such. It cannot be denied that a suit for a declaration of his rights against the land-holders and the persons claiming through them can be filed by the plaintiff under Section 59 of the Act. Against the bar created by Section 242 of the Act the argument of Mr. Bashir Ahmad, learned counsel for the appellant, is two-fold. Firstly, he has urged that the plaintiff has sought the relief that the leases dated 1st November 1954 and 4th November 1954 be adjudged void and cancelled and this is not a relief which could have been granted by the revenue Court. Secondly he has contended that the plaintiff has also prayed for a declaration that the decrees of the Revenue Court in the 1954 suits are void and ineffective and not binding upon him and this relief was certainly beyond the competence of the Revenue Court to give. The assumption on which the argument of Mr. Bashir Ahmad is based is that cancellation or avoidance of the leases and the decrees is essential for the establishment of the right which the plaintiff claims and if this assumption is erroneous the entire structure of his argument becomes without foundation. The stand taken by the plaintiff in the plaints is that he continues to be a tenant of the land in suit and during the subsistence of his tenancy the land-holders were not competent to create a tenancy in favour of the defendants and the leases executed by them could not have the effect of extinguishing his rights. The second ground of attack against the leases suggested in the plaints is that since they were executed by only some and not by the entire body of land-holders they were ineffective for the purpose of creating any rights in favour of the defendants. The result according to the plaintiff is that he has continued to be the tenant and the defendants have not acquired tenancy rights in spite of the leases in their favour. The question is whether for an adjudication of this claim of the plaintiff it is necessary that the leases be cancelled or that they be adjudged void and

ineffective. In my view, the question admits of only one answer. In order that the plaintiff may be declared to be the tenant of the land in suit it is not at all necessary to have the leases under which the defendants lay their claim cancelled or adjudged void and a declaration that the plaintiff is the tenant would in itself remove the leases out of his way. What is true of the leases is to my mind equally true of the decrees which are sought to be avoided by the plaintiff. According to the plaintiff the decrees are without jurisdiction and null, void and ineffective and surety if such is their character the plaintiff is free to ignore them and a declaration as to their being without jurisdiction and null, void and ineffective cannot be a condition precedent to a relief under Section 59 of the Act.

7. If a deed or a decree has legal force and operation and precludes the grant of a declaration or other relief to a plaintiff without having been cancelled or adjudged as void and ineffective it might be necessary for him to invoke the jurisdiction of the civil court and to clear the ground for obtaining that relief which may be available to him in the revenue court, but where, according to the plaintiff himself, the deed or the decree is devoid of all legal force and effectiveness it cannot constitute an impediment in the way of the plaintiff in getting a declaration as to his rights or in recovering possession through the revenue court. Cancellation or adjudication of the invalidity of the deed or the decree is in such a circumstance wholly unnecessary and the jurisdiction of the revenue court cannot be ousted nor can jurisdiction be conferred on the civil court by claiming reliefs to that effect. I am supported in this view by the decisions of this Court in *Uma Pandey v. Purshottam*, 1960 All L J 676, *Mst. Surai Mukhi v Phool Genda*, F. A. F. O No. 258 of 1951 D/- 18-2-1959 (All) Then, it is well settled that in order to judge whether cognizance of a suit by the civil court is barred by Section 242 of the Act, the Court has to see the true grievance of the plaintiff and not what he professes to be aggrieved by. What has to be determined is whether he can get redress in the revenue court and not whether he can get the precise kind of redress which he claims. In other words, it is the real cause of action and not what it is made out to be and it is the power of the Revenue court to provide a relief, although it may not be exactly the relief of the plaintiffs choosing, that furnishes the test for deciding whether a suit is within the cognizance of the revenue court.

8. If, therefore, the plaintiff is in possession of the land in suit and wants to establish that his rights as a tenant have remained unaffected by the leases or the decrees, a suit for declaration under Section 59 of the Act will not only serve his purpose but would provide a completely effective relief. All the landholders are parties to these suits and the real object to be attained by the suits is to have it adjudicated in the presence of the land-holders and the rival claimants to the land in suit that the plaintiff has continued to be a tenant despite the leases and the decrees abovementioned. There can be no manner of doubt that this object can be attained, and attained adequately and fully, although that is not necessary, by a suit under Section 59 of the Act. The addition of the relief of permanent injunction restraining the defendants, from interfering with the plaintiff's possession too does not in any way alter the situation. It has been repeatedly held that the prayer for such a relief does not clothe the civil court with a jurisdiction which it does not otherwise possess and the explanations to Section 242 of the Act themselves furnish a complete answer to any argument based on the ground that a relief for permanent injunction is not within the competence of the revenue court. Authorities of this Court on the scope and effect of Section 242 of the Act and of the corresponding section in the Agra Tenancy Act of 1926 are numerous and well known; I may only refer to *Mst. Ananti v. Chhannu* : AIR1930 All193 ; *Mohd. Zahir Hasan v. Dulare* : AIR1953 All729 and *Baiju v. Shambhu Saran*, 1983 All LJ 1064.

9. Now remains the relief of possession which has been claimed by the plaintiff in the alternative. It has not been denied by Mr. Bashir Ahmad that as an occupancy tenant the plaintiff could have brought a suit for possession against the contesting defendants in the Revenue court under Section 180 of the Act. But it has been contended by him that if the right of the plaintiff as an occupancy tenant is deemed to have been finally negatived by the 1956 suits the status of the plaintiff is only that of a non-occupancy tenant (though the plaintiff has not framed the suits on that basis) and as such he could not have sued under Section 180 of the Act. The argument is that it is only a person entitled to admit another person to the occupation of a land who is empowered to institute a suit under Section 180 of the Act and that a non-occupancy tenant is not a person so entitled. The contention appears to me to be patently misconceived. Under section 40 (2) of the Act a non-occupancy tenant is only prohibited from subletting the whole or any portion of his

holding for a term exceeding one year or within a year of any portion of such holding being held by a sub-tenant, and he is not completely prohibited from sub-letting. Moreover, under Section 180 (1) as amended by Act X of 1947 the person suing need not be competent to create a tenancy but only to admit to occupation. It is, therefore, wrong to suppose that a non-occupancy tenant does not fall in the category of those persons who are competent to bring a suit under Section 180 of the Act. Another reason advanced by Mr. Bishir Ahmad for the contention that the plaintiff could not bring a suit under Section 180 of the Act is as follows. It was held in the 1954 suits and in the writ proceedings, referred to above, that the land lay in the bed of a river and it was used for casual or occasional cultivation only and no hereditary rights can consequently accrue in it by virtue of the provisions of Section 30 (2) of the Act. It is argued that since the result of not bringing an action for ejectment under Section 180 (1) of the Act is that the person in occupation becomes a hereditary tenant and since a person in occupation of a land used for casual or occasional cultivation in the bed of a river cannot acquire the rights of a hereditary tenant, a suit in respect of such land must be deemed to be outside its scope.

10. A suit under Section 180 (1) is entertainable in regard to any 'land' irrespective of the right which may or may not accrue in it to the person in occupation if no suit is brought against him. The scope of Sub-section (1) of Section 180 cannot be restricted by sub-s. (2) and it is not possible to construe Sub-section (1) of Section 180 as limited to suits for that kind of land only in respect of which the consequences mentioned in Sub-section (2) of the section may ensue. It is true that in some cases prior to the amendment of Section 180 of U. P. Act X of 1947, Sub-sections (1) and (2) of Section 180 were read together for deciding who were competent to sue under Section 180 but that was because of the difficulty created by the words used in the section as it stood before the amendment. Sub-s. (2) of Section 180 was, however, never regarded as curtailing the scope of Sub-section (1) in regard to the kind of land in respect of which a suit could be brought under it. I may also mention that it may be arguable that Section 30 of the Act should not be deemed as overriding Section 180 (2) of the Act, particularly when the opening words of Section 30 are 'notwithstanding anything in Section 29' and not 'notwithstanding anything in this Act.' I do not, however, regard it necessary to

consider the question as to which of these provisions, Section 30 or Section 180 (2), prevails over the other. For the purpose of this case all that is necessary to see is whether there is anything in Section 180 (1) which may exclude from its operation a suit in regard to a land to which Section 30 of the Act is not applicable. I find myself unable to see anything of that kind in Section 180 (1). To my mind, the matter does not admit of any doubt that irrespective of the fact whether it is possible that the consequences mentioned in Section 180 (2) of the Act may follow, a suit under Section 180 (1) would lie in respect of what is land within the meaning of the Act. I may here refer to the decision of this Court in *Dr. Ram Swarup v Lalji* (Civil Revn. No. 1020 of 1950, D/- 17-8-1955 (All)) where it was held by V. Bhargava, J., that Section 180 of the Act is applicable to a suit in respect of a grove-land, although under Section 30 of the Act hereditary rights cannot accrue in respect of a grove-land as well. The plaintiff could therefore sue under Section 180 of the U. P. Tenancy Act of 1939 for possession. At any rate, there was nothing to prevent him from doing so under Section 183 of the Act as he has done on the earlier occasions.

11. For the foregoing reasons it appears to me clear that the present suits are not cognizable by the civil Court. In view of what I hold in regard to the question of jurisdiction it does not appear to be either necessary or proper to express any opinion on the other questions involved in the case.

12. What remains to be considered is whether the suits should be dismissed or the plaints should be returned for presentation to the proper court. The course to be adopted in cases of this kind has been laid down in the majority judgment of the Full Bench in *Mst. Ananti's case* : AIR1930 All193 (supra) as follows :

'Where it is found, on the allegations made in the plaint, that the suit is cognizable by the Court, it will have to proceed to find whether the facts alleged in the plaint are established or not. If it is found on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendant are true, and that the case is not cognizable by the Court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be

returned for presentation to the proper Court. If, on the other hand, it is found, having regard to the nature of the suit, it is not cognizable by the class of the Court to which the Court belongs, the plaintiff's suit will have to be dismissed in its entirety. The reason will be that on the unamended plaint the Revenue Court would have no jurisdiction to hear this suit.'

To the same effect are the observations of Desai, J. (As he then was) in *Dwarka v. Jwala Singh*, (1958 Allahabad Weekly Reporter (HC) 21), where after referring to the cases in which a similar situation arose his Lordship stated :--

'In most of these cases it was assumed that the plaint in the existing form could be presented before a Revenue court and the question whether a plaint which in its existing form cannot be entertained by a Revenue Court must still be returned by the Civil Court for presentation to a Revenue Court, was not discussed. They dealt with suits which should have been filed in a revenue Court but were filed in a civil court; apparently the plaints in those suits were such as should have been presented before a revenue Court and not before a civil court. The plaint in the present case could not be presented before a revenue court; it could be presented before a civil Court but the jurisdiction of a civil court is barred by Section 242, U. P. Tenancy Act.'

The present suits too are barred by Section 242 of the Act but the plaintiffs of these suits like the plaint in the case in which the above observations were made, are not such as may be presented before the revenue court in the shape in which they have been framed. They cannot, therefore, be directed to be returned for presentation to the Revenue court and the suits have to be dismissed.

13. The appeals fail and they are accordingly dismissed with costs.

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