

Bidha and ors. Vs. Bhola and ors.

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Court : Allahabad

Decided On : May-15-1928

Reported in : AIR1928All681

Appellant : Bidha and ors.

Respondent : Bhola and ors.

Judgement :

Dalal, J.

1. The plaintiffs, lessees under a prior transfer, sued for the ejectment of the defendants who are lessees under a subsequent transfer. The zamindar was also made defendant. The zamindar executed a lease on 11th October 1922, in favour of the plaintiffs to take effect on 23rd July 1923. The zamindar did not give possession, but subsequently on 17th November 1923, made a lease in favour of the defendants. The defendants were agricultural tenants in possession of the plots of land and had been ejected through a revenue Court. After the ejectment and after the zamindar took possession through Court this lease of 17th November 1923 was executed. The trial Court distinguished certain cases of defendants. He exempted out of the suit certain plots over which a defendant had acquired occupancy rights, and also certain plots which were in the cultivating possession of persons other than the defendants. As to the rest he granted a decree for possession.

2. The learned Subordinate Judge was of opinion that the decree for possession could not be given because the defendants being tenants formerly and having been admitted within a year from the date of such ejectment by the landholder to the tenancy of the land from which they had been ejected the tenancy was deemed to have continued from the commencement of the tenancy under Section 13, Tenancy Act, 1901. He says that as a matter of fact the proceeding should be treated as if no ejectment took place. He has, however, in my opinion, overlooked one incident, that when, the zamindar re-admitted the tenants to the tenancy 'or rather professed to do so, he had no right left to let the land to any person having parted with that right by the lease which he made on 11th October 1922. Obviously the terms of Section 13 would apply where the landholder has at the time power to re-admit the tenant to the tenancy, and not where he has parted with such power. At the last date of hearing it was represented to me that the tenants had acquired a right of occupancy prior to the institution of the suit by reason that the lease for six years in their favour of 17th November 1923, did not stop the running of the period of the tenancy for the acquisition of occupancy rights. I gave time to the respondents to prove this allegation. The affidavit filed is of the vaguest character, and I hold that the defendants did not acquire a right of occupancy in the land in suit prior to the institution of the suit.

3. It was argued to-day that the application of the provisions of Section 53, T.P. Act, shall not impair the right of a transferee in good faith and for consideration. In the written statement filed by the defendants even want of knowledge of the lease of 11th October 1922 was not alleged. There was no plea that the defendants had acted in good faith and had obtained the transfer for a consideration without notice of the prior transfer to the plaintiffs. Under similar circumstances a single Judge of this Court delivered the following opinion in *Lalu Ram v. Thakur Das* [1903] 2 A.L.J. 156:

The lease which was granted to the respondents and under which they are now in possession was executed by persons who had deprived themselves by the lease which they had previously given to the plaintiffs of any, right to execute such a lease and, in my opinion, it gives the defendants no right to resist the plaintiff's claim for possession.

4. It is true that no authority is quoted for the proposition, but it seems to be consonant with common-sense. In my opinion the trial Courts passed a right decree. I set aside the decree of the fourth Additional Subordinate Judge, dated 23rd July 1925, and restore the decree of the Additional Munsif of Aligarh dated 17th December 1924, with costs of the lower appellate Court and this Court.

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