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Court : Allahabad

Decided On : Mar-23-1931

Reported in : AIR1932All37

Appellant : Jagarnath Singh and ors.

Respondent : Damodar Singh and ors.

Judgement :

Sulaiman, Ag. C.J.

1. This is a defendants' appeal arising out of a suit brought by the reversioners of the last mala owner on whose death his mother Mt. Sarupa was in possession. The suit was instituted in the Revenue Court under Section 79 of the old Agra Tenancy Act against the transferees and their lessees, claiming to derive title from Mt. Sarupa. the suit was resisted on the ground that the sale deed was for legal necessity and was binding on the reversioners. It was also pleaded that the case was barred by limitation and that the Revenue Court had no jurisdiction to entertain the suit. They also denied that the plaintiff was reversioner.

2. Some of the defendants were the representatives of the last proprietor and the Assistant Collector found that after partition they had become the sole proprietors of these lands. They were therefore also landholders of these plots which were owned by the plaintiff as his fixed rate tenancy. The trial Court held that the suit was not barred by limitation, that it had jurisdiction to entertain the suit, and on the

merits it found in favour of the plaintiff and decreed the claim.

3. The defendants appealed to the District Judge and re-agitated the question of want of jurisdiction and of legal necessity. At the hearing the counsel for the parties agreed that an issue as to the validity of the consideration and of the existence of legal necessity should be remitted to the Munsif's Court for determination. The Munsif recorded a finding on the issue remitted and possibly went a little beyond it. The learned Judge, on a consideration of the evidence, came to the conclusion that Rs. 746 out of the total consideration of Rs. 999 had been actually taken for legal necessity and that the rest had not been taken. He however found that the property was worth about Rs. 2,100, and therefore the sale was without any legal necessity-He modified the decree of the Assistant Collector and decreed the plaintiff's claim for recovery of possession on payment of Rs. 746 to the defendants.

4. The defendants appealed to this Court and the plaintiff filed a cross-objection. On appeal a learned Judge of this Court came to the conclusion that the suit was not cognizable by the Revenue Court inasmuch as Section 79 was not applicable, but held that by virtue of Section 197 the District Judge could have disposed of the matter on appeal. He however considered that the decree directing the plaintiff to pay Rs. 746 as a condition precedent to the recovery of possession was unjustified. He dismissed the appeal and allowed the cross-objection to that extent.

5. We fully agree with the view expressed by the learned Judge that Section 79 was not applicable to this case. No doubt some of the defendants had as a result of the partition become sole proprietors of the plots in dispute, but as they had obtained possession from the Hindu widow Mt. Sarupa before her death, it was not a case where the plaintiff reversioner had been ejected by his landholder within the meaning of Section 79 of the old Tenancy Act. The suit therefore should not have been filed in the Revenue Court.

6. But the learned Judge has rightly pointed out that as it was a case where on account of the plea of want of jurisdiction having been raised an appeal lay to the District Judge. It was his duty under Section 197, Tenancy Act, to dispose of the

appeal when all the materials were before him. As a matter of fact the counsel for the parties agreed that an issue might be remitted to the Munsif's Court and it was sent down. We therefore think that there is no defect in the procedure adopted by the learned District Judge. His finding that the legal necessity to the extent of Rs. 746 only was proved must be accepted.

7. We however do not agree with the view of the learned Judge of this Court that the plaintiff cannot be called upon to pay Rs. 746 which has been found to have been required for legal necessity. The learned advocate for the respondents has relied upon the case of *Murli v. Ghamar* : AIR1930 All22 . We do not think that the learned Judges in that case necessarily meant to lay down that in view of the recent pronouncements of their Lordships of the Privy Council a decree calling upon the plaintiff reversioner to pay the amount found to have been borrowed for legal necessity as a condition precedent to the recovery of possession of the property transferred by a sale deed which is invalid and improper. Such a view would be contrary to the express pronouncements of their Lordships of the Privy Council in several other cases. We may in this connexion refer to the case of *Deputy Commissioner of Kheri v. Khanjan Singh* [1907] 29 All. 331 as well as to *Bhagivat Dayal Singh v. Debi Dayal Sahu* [1908] 35 Cal. 420. In the last mentioned case the defendants were allowed interest on the amount found to have been taken for legal necessity and as against it the plaintiffs were allowed mesne profits. In the more recent case of *Banwari Lal v. Mahesh* A.I.R. 1918 P.C. 118 (at p. 63 of 41 All.) their Lordships pointed out that where the sale is to be set aside conditionally upon payment of certain sums borrowed for legal necessity, the defendants must be deemed to be lawfully in possession until they are set aside and are therefore not accountable for mesne profits. Their Lordships actually passed a decree for possession conditional on payment of the sum found to be good. In view of these clear authorities we must hold that the decree passed by the learned District Judge was right.

8. These cases are obviously based on the principle that a person who seeks equity must do equity. The converse case of ordering the purchaser to keep the property on payment of the consideration found not to have been for legal necessity stands on a different footing. Such a decree cannot be passed in view of

the pronouncement of their Lordships in Sri Krishen Das v. Nathu Ram .

9. We accordingly allow the appeal in part, and modifying the decree of the learned Judge's Court restore that of the District Judge. As both parties partly failed, we direct that they should both bear their own costs of the proceedings in the High Court. The decree of the District Judge as to the costs incurred up to that Court will stand.

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