

Daulat Singh and anr. Vs. Inder Singh

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Court : Allahabad

Decided On : Apr-22-1921

Reported in : 63Ind.Cas.97

Judge : Lindsay, J.

Appellant : Daulat Singh and anr.

Respondent : Inder Singh

Judgement :

Lindsay, J.

1. The only question for decision in this appeal is whether tin suit out of which it has arisen was cognizable by a Civil Court.
2. It appears that just before the recent revision of settlement in the Bulandshahr District, the plaintiff Inder Singh was recorded as the sole tenant of certain occupancy holdings.
3. The defendants applied to the Record Officer for correction of the papers, alleging that they were joint tenants of these holdings whose names should be recorded along with that of the plaintiff. Eventually by order of the Commissioner passed in appeal, the defendant were declared to be holding jointly with the plaintiff and an entry was made accordingly.

4. The plaintiff has now brought this suit in a Civil Court to obtain a declaration that he is the sole tenant of the holdings in dispute and that the defendants have no concern with them. Both Courts below have held that the suit is cognizable by a Civil Court. The first Court on the merits decided against the plaintiff and dismissed his suit. The lower Appellate Court has found in plaintiff's favour and given him a decree.

5. The Argument before me is that the Civil Court had no jurisdiction to entertain the case.

6. It was contended in the first place that the suit was barred by Section 167 of the Agra Tenancy Act, and that the case was one to which Section 95 of that Act applied. In other words, it was sought to be made out that the object of the suit was to obtain a declaration that the defendants, who were recorded as occupancy tenants in the Revenue papers, were not tenants of that description but, belonged to some other class.

7. I am unable to accept this argument. The plaintiff wants a declaration that the defendants have no interest in, or concern with, the occupancy holdings of which he claims to be the sole tenant. He is not seeking to have the defendants declared to be tenants of any particular class.

8. Further, the suits contemplated by Section 95 of the Tenancy Act are suits between landholders and tenants. The suit under consideration is one between an occupancy tenant and certain persons who are alleged to be trespassers.

9. The appellants Counsel has relied upon the case reported as *Dori Lal v. Sardar Singh* 5 A.L.J. 514 : A.W.N. (1908) 240, but that was a case between a landholder and a tenant.

10. He has also cited *Diwan Singh v. Randhera* 26 Ind. Cas. 718 : 12 A.L.J. 1322, which is certainly in his favour, but that case was overruled by the decision of a Bench in *Kanhi Ram v. Durga Prasad* 27 Ind. Cas. 913 : 13 A.L.J. 278 : 37 A. 223.

11. A third case which is called in aid of the plea for the appellants is *Baljit v. Mahipat* 49 Ind. Cas. 118 : 17 A.L.J. 60 : 41 A. 208. In my opinion this does not

help the appellants. It was a suit for ejectment brought in a Civil Court after a similar suit brought in a sent Court had failed, in the latter Court the plaintiff had alleged that the defendants were his sub-tenanta. In the Civil Court he alleged that they were trespassers. It was held that the defendants were tenants and not trespassers aid that acnsequently a suit for their ejectment would not lie in a Civil Court.

12. The other argument of the appellants learned Counsel is founded upon the provisions of certain sections of the Land Revenue Act.

13. He has referred to Sections 44 and 57, which are cognate sections. The latter section is to be found in Chapter IV of the old Act which deals with the revision of maps and records, and it is admitted that the proceedings taken before the Record Officer which ended in the entry being made in the defendants' favour were taken under this Chapter. Section 53 requires the Record Officer to frame for each mahal a Record of Rights consisting of the registers enumerated in Section 32 of the Act and Section 54 describes bow the Record Officer is to deal with disputes about the entries in these registers; he is to dispose of them in accordance with the provisions of Sections 40, 41, 42 and 43.

14. The relevant section here is Section 40 which provides [Sub-section (1)] that all disputes regarding entries in the, annual registers (i.e., those described in Section 32 of the Act) are to be decided on the basis of possession.

15. Sub-section (3) of Section 40 lays down that no order as to possession passed under the section shall debar any person from establishing his right to the property is any Civil or Revenue Court having jurisdiction.

16. It is clear in the present case that the entry which was made in the defendants' favour was based upon possession, and prima facie it would appear that the order was, therefore, no bar to the present civil suit in view of what is laid down in Section 40, Sub-section (3). But it is said, Section 41 (or Section 57 which is the same thing) lays down a rule that the only entries which can be contested in a Civil Court are those contained in the registers referred to in Clauses (a) to (d) of Section 32, and that it is, therefore, provided by necessary implication that there

can be no congest in a Civil Court regarding entries in the tenants register which is referred to in Clause (e) of Section 32.

17. A similar argument was rejected by Banerji, J., in the case of Ajodhia Singh v. Ram Dyal 4 A.L.J. 769 : A.W.N. (1908) 3, I have been invited to declare that this decision is erroneous; but I am not of that opinion, for I am unable to discover any answer to the argument of the learned Judge based upon the language of Section 40, Sub-section (3),

18. To adopt the argument here put forward on the language of Section 44 (or Section 57) would be to ignore the express declaration contained in Section 40, Sub-section (3), and for that reason I am unable to hold, on the principle of inclusion uniut est exclusio alterius, that Section 44 or Section 57 debars a Civil Court from entertaining a suit regarding an entry made on the basis of possession in the tenants register Section 32, Clause (e).

19. In ray opinion the judgment of the lower Appellate Court is correct and I dismiss this appeal with costs.