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Court : Allahabad

Decided On : Dec-23-1948

Reported in : AIR1949All542

Appellant : Basdeo Singh

Respondent : Bharat Singh

Judgement :

1. The sole controversy in this second appeal relates to jurisdiction.

2. The suit was for possession of certain tenancy lands on the basis of a patta from the landlord and for recovery of damages. The defendant Kunj Behari who has since died and is now represented by Basdeo Singh appellant set up a rival claim to tenancy. The learned Munsif, Partabgarh, who investigated the case passed a decree in favour of Bharat Singh plaintiff, and the decree was confirmed by the learned Civil Judge, Partabgarh, in appeal. It is not denied on behalf of the defendant, and indeed it could not be disputed in view of the decision in the case of Ori Lal v. Ganeshi A.I.R. (34) 1947 Oudh 104 F.B., that the suit was rightly instituted in civil Court. It is contended, however, that in view of the recent alteration of Section 180, Tenancy Act by Section 18, U.P. Tenancy (Amendment)' Act of 1947 (U.P. Act [10] of 1947) the learned Munsif must now be deemed to have decided; the case without jurisdiction. It is urged that the suit was of the nature contemplated by the present Section 180, and that the only order, which this Court can pass in appeal, is to direct that the plaint be returned to Bharat

Singh respondent for presentation to revenue Court.

3. Under the law laid down by the Oudh Rent Act, suits between rival tenants were not, excluded from the cognisance of civil Courts. The law contained in Section 180, U.P. Tenancy Act of 1939 in respect of suits for possession of agricultural land against trespassers was as follows:

A person taking or retaining possession of a plot or plots of land otherwise than in accordance with the provisions of the law for the time being in force and without the consent of the person entitled to admit him as tenant shall be liable to ejectment under this section on the suit of the person so entitled, or when the joint consent of more than one person is required on the suit of any one or more of such persons, and also to pay damages, which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants.

(2) If no suit is brought under this section or a decree obtained under this section is not executed the person in possession shall on the expiry of the period of limitation prescribed for such suit or for the execution of such decree, as the case may be, become a hereditary tenant of such plot or plots.

After the new legislation (U. P. Tenancy Act of 1939) came into force, a Full Bench of the Chief Court held in Ori Lal's case A.I.R. (84) 1947 Oudh 104 F.B. that Section 180 did not contemplate- a suit by a tenant who was dispossessed of the whole or a part of the holding by persons other than those referred to in Section 183 of the Act and that a suit of that description lay in civil Court alone. The amending Act of 1947 which came into force from 7th June 1947 had for its avowed object the re-enactment or repeal of certain local Acts and the giving of relief to certain tenants ejected under the parent Act of 1939. According to the preamble it was to provide also for the better utilisation of land. Act X [10] of 1947 substituted the following for the then existing Section 180:

(1) A person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable

to ejectment under this section on the suit of the person so entitled, and also to pay damages which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants:

Provided that, notwithstanding the provisions of Sub-section (1) of Section 246, where such a person taking or retaining possession is one of the co-sharers whose joint consent is required to bring such suit, he shall not be required to join as plaintiff in the suit. In such a case the decree passed in favour of the plaintiff shall be deemed to be in favour of all such co-sharers.

Explanation I.- A co-sharer in the proprietary rights in a plot of land taking or retaining possession of such plot without the consent of the whole body of co-sharers or of an agent appointed to act on behalf of all of them, shall be deemed to be in possession of such plot otherwise than in accordance with the provision of the law within the meaning of this section.

Explanation II.-.A tenant entitled to sublet a plot of land in accordance with the provisions of the law for the time being in force may maintain a suit under this section against the person taking or retaining possession of such plot otherwise than in the circumstances for which provision is made in Section 183.

(2) If no suit is brought under this section, or if a decree obtained under this section is not executed, the person in possession shall become a hereditary tenant of such plot, or if such person is a co-sharer, he shall become a khudkasht-holder, on the expiry of the period of limitation prescribed for such suit or for the execution of such decree, as the case may be:

Provided that where the person in possession cannot be admitted to such plot except as sub-tenant by the person entitled to admit, the provisions of this subsection shall not apply until the interest of the person so entitled to admit is extinguished in such plot under Section 45 (f).

4. Explanation II, it will be noticed now, enables a tenant also to maintain a suit under Section 180 against a person taking or retaining possession of tenancy lands otherwise than in the circumstances for which provision is made under

Section 183. Suits under Section 180 are, included in group B of Schedule 4 at item 18 and under Section 242, Tenancy Act of 1939 exclusive jurisdiction over suits and applications of the nature specified in Schedule 4 was conferred on revenue Courts except that appeals and revisions arising out of suits and applications thus specified could be entertained by Courts other than Courts of revenue if so provided in the Act. The provisions of Section 242, however, were also amended by the Act of 1947, and the amended section now reads as follows:

Subject to the provisions of Section 286 all suits and applications of the nature specified in Schedule 4, shall be heard and determined by a revenue Court, and no Court other than a revenue Court, shall, except by way of appeal or revision as provided in this Act, take cognisance of any such suit or application, or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Explanation I.-If the cause of action is one in respect of which relief might be granted by the revenue Court, it is immaterial that the relief asked for from the civil Court may not be identical with that which the revenue Court could have granted.

Explanation II.- If the cause of action is one in respect of which relief might be granted by the revenue Court under Section 180, it is immaterial that the relief which may be asked for from the civil Court is greater than or additional to that which the revenue Court could have granted.

Example-If in a suit under Section 180, a person claims damages exceeding four times the annual rental value, he cannot oust the jurisdiction of the revenue Court by framing his relief as such.

5. On behalf of the appellant two points are raised in arguments alternatively-(1) that the power to entertain a suit instituted by a tenant for possession of tenancy land is vested in revenue Courts alone by virtue of Expl. II now appended to Section 180. It is said that the provision thus made must be deemed to be declaratory of the law as it stood before and not as conferring a new jurisdiction on revenue Courts, and (2) that at any rate since Section 242 withdraws all suits of the nature specified in Schedule 4 from the cognisance of civil Court, the present

suit, even though it is at appellate stage, must be governed by Section 180 in its new form and must be sent back to the proper forum for disposal.

6. The above points were urged before Kaul J., when the appeal came up before him for hearing in May 1948. Having regard, however, to the importance of the questions raised, the learned Judge referred the case for decision. to a Division Bench.

7. We have heard the arguments advanced in favour of the contention but are unable to agree with any of the two propositions set forth above.

8. It has already been mentioned that at the time of the institution of the suit in 1942 the civil Court was the only Court which could grant the relief sought by the plaintiff. According to the ordinary canons of interpretation an enactment cannot be deemed to have retrospective effect, unless there are to be found in it express words to that effect, or unless such intendment can be gathered by necessary implication. Section 18 of the Amending Act does not say that a suit of the nature specified in Expl. 11 'shall be deemed to have been always maintainable in revenue Courts.' The only section which might be invoked in aid is Section 31(1) which lays down:

31. (1) All proceedings, suits, appeals and revisions pending under the said Act on the date of the commencement of this Act and all appeals and revisions filed alter that date against orders or decrees passed under that Act and all decrees and orders passed thereunder which have not been satisfied in full, shall be -decided or executed, as the case may be, and where necessary such decrees and orders shall be amended, in accordance with the provisions of the said Act as amended by this Act:

Provided firstly that if such a decree or order cannot be so amended, or the execution of or the appeal or revision from such an amended decree or order cannot to proceeded with, it shall be quashed. In such a case, the aggrieved party shall notwithstanding any law of limitation be entitled to claim, within six months from the date on which such decree, or order is quashed, such rights and remedies as he had on the date of the institution of the suit or proceedings in

which such decree or order was passed, except in so far as such rights or remedies are inconsistent with the provisions of the said Act as amended by this Act:

Provided fourthly that all suits, appeals, and revisions pending under Section 180 of the said Act, on the date of the commencement of this Act, for the ejectment of any person who was recorded as an occupant on or after 1st day of January 1938, in a record revised under Chap. IV, U.P. Land Revenue Act, 1901, or corrected by an officer specially appointed for the correction of annual registers in any tract, shall be dismissed, and all decrees and orders for the ejectment of such persons, which have not been satisfied in full on the date of the commencement of this Act shall be quashed:

Provided fifthly that nothing in this sub-section shall affect the forum of appeal or revision from a decree or order passed by a civil Court under the said Act.

It is obvious that the provisions of Section 31 (1), apply to appeals and revisions under the U.P. Tenancy Act and not to those under the Code of Civil Procedure.

9. A perusal of Act X [10] of 1947 would indicate that certain sections of the parent Act were re-enacted or amended and in some cases radically altered. In general when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights. A new procedure would presumably be inapplicable where its application would prejudice rights established under the old. A statute should not, therefore, be interpreted so as to disturb vested rights or so as to have the effect of altering the law applicable to a claim which was pending at the time when the new Act was passed. Bharat Singh's right to recover possession and damages was found in his favour by a Court of competent jurisdiction and the decree of that Court could not be overruled in absence of some declared intention of the legislature in clear and unequivocal language except by a Court which was authorised to entertain a further appeal from it. Before therefore we accede to the appellant's argument, circumstances must be shown which rendered a contrary view inevitable. The circumstance, to which reference was made by the learned Counsel for the appellant, is that the

authority to decide suits for possession instituted by tenants against persona taking or retaining possession of land is given by addition of a mere explanation in the old section and not by substantive and separate provision in the new Act. Our reading of the new section is different. The old section, we find, has been very materially altered, and. the explanations now appended must be deemed to apply to the provision in its altered form. The explanation must, therefore, be deemed to elucidate Section 180 as it now stands after alteration, and in that sense it must be conceded that the explanation does not enlarge its scope. It may also be pointed out that a provision, though embodied in an enactment by an explanation, may some time contain matters which in substance amount to a fresh legislation and in appropriate cases it may be found to add and not merely to elucidate what goes before. It is the nature of the provision which has to be considered, and if the enacting part of the section is clear and unambiguous and it is found that it could have included the subject-matter of the explanation, the elucidation though under the guise of an explanation is in substance a fresh provision. In this case we are unable to read in Explanation II an intention that Section 180 as it now stands should be deemed to have always stood in its present form. In course of his arguments the appellant's learned Counsel cited a number of cases which dealt with declaratory or explanatory Acts. Act X [l0] of 1917 is not of that nature and it is unnecessary for us to examine those cases.

10. The second argument does not require much discussion. Section 242 makes an obvious distinction between suits, appeals and revisions and it would be difficult to understand the prohibition in respect of suits as importing a prohibition against entertaining appeals which have arisen out of suits previously cognisable by civil Court, even though by reason of the Amending Act they are brought exclusively within the jurisdiction of Courts of revenue. It has obviously no application to appeals against decisions in suits of a civil nature and appeals in such cases have to be governed by the Civil P.C.

11. No arguments were advanced on merits of the case. The appeal fails and is accordingly dismissed with costs. Stay order, dated 8th September, 1943 is vacated.