

Param Sukh and anr. Vs. Dambar and anr.

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Court : Allahabad

Decided On : Jan-08-1926

Reported in : AIR1927All102

Appellant : Param Sukh and anr.

Respondent : Dambar and anr.

Judgement :

Sulaiman, J.

1. This is a plaintiffs' appeal arising out of a suit for a declaration that they are the occupancy tenants of the holding and are not the sub-tenants of the defendants. Prior to the institution of the suit the defendants had filed a suit, in the revenue Court against the plaintiffs alleging that the defendants were the tenants-in-chief and that the plaintiffs were the sub-tenants. That suit admittedly resulted in a decree which was affirmed by the Board of Revenue. The result is that the plaintiffs have been ejected by the revenue Court. After the passing of the revenue Court decree the present suit in a civil Court was instituted for the declaration aforementioned. Both the Courts below have thrown out the suit, on the ground that it is barred.

2. The learned Advocate for the appellants contends that the ejection by the revenue Court proceeded on the assumption that the plaintiffs were holding the land under Section 34 of the Tenancy Act and were not the tenants of the

defendants but even under Section 34, a person occupying the land without the consent of the landlord is liable for the rent of the land. It is true that he cannot be deemed to hold the land for the purpose of acquiring occupancy rights, but nevertheless he is liable to pay rent. When he is liable to pay rent then under Section 2(5) he is a tenant. The revenue Court, therefore, had jurisdiction to eject him. Having been ejected by the revenue Court he cannot now be allowed to maintain a suit in the civil Court for a declaration that in spite of the ejectment decree he is still a tenant-in-chief. This case is covered by the recent Full Bench case of Fateh Singh v. Gopal Narain Singh A. 1. Rule 1925 All. 637. The appeal is dismissed under Order 41, Rule 11, Civil P.C.

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