

Devi Nath Vs. Ram Datt and ors.

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Court : Allahabad

Decided On : Apr-17-1950

Reported in : AIR1950All664

Judge : V. Bhargava, J.

Acts : Tenancy Law; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 - Rule 3

Appeal No. : Second Appeal No. 1749 of 1946

Appellant : Devi Nath

Respondent : Ram Datt and ors.

Advocate for Def. : D.P. Uniyal, Adv.

Advocate for Pet/Ap. : L.M. Pant, Adv.

Disposition : Appeal allowed

Judgement :

V. Bhargava, J.

1. This second appeal arises out of a suit for a declaration of a right to and recovery of possession over some agricultural land in Kumaon. The suit was contested by the defendant-appellant in the trial Court on merits but was decreed against him, An appeal was filed and in the first appellate Court, apart from all

other grounds, an additional ground that was urged on behalf of the defendant-appellant was that the civil Court had no jurisdiction to entertain this suit. The first appellate Court rejected this plea. In this appeal the only questions that has been argued is this question of jurisdiction of the civil Court to entertain this suit.

2. It is contended on behalf of the appellant that under Rule 3 read with Items 20 and 21 (b) of the Schedule to the rules for revenue Courts dealing with Kent and tenancy matters in Kumaon, this suit is of such a nature that the relief claimed could have been claimed in the revenue Court and, therefore, the civil Court had no jurisdiction to entertain it. Under Rule 3 read with item 21 (b) any dispute for the determination of the class to which a tenant belongs has to be decided by a revenue Court. In the-present case the first relief claimed in the plaint was that the defendant-appellant was not a khaikar of the land in suit and had no right to get his name entered as such. In the second relief it was admitted that he was a sirtan. The first relief read together with the second relief would indicate that the first relief merely amounted to a declaration that the defendant -appellant was not a khaikar but a sirtan. Obviously, therefore, the first relief was a relief for the determination of the class of tenants to which the appellant belonged. There was no contention that the appellant was not a tenant at all. The only contention was that he was a sirtan -and not a khaikar. The definition of the word 'tenant' given in Rule 2 indicates that this word covers pucca khaikar, kachcha khaikar as well as sir tans. The first relief in the plaint was, therefore, clearly a relief falling within Clause (b) of Item 21 of the rules and, therefore, the suit in respect of it could have been brought in the revenue Court under Rule 3.

3. The second relief is a relief for possession on ejection of the defendant-appellant' In this connection also, it is to be noticed that there is no allegation that the defendant-appellant was a trespasser. All that was claimed was that the defendant-appellant who was still a sirtan on the date of the suit had become liable to ejection because he had got himself entered as a khaikar. This was, therefore, a suit for ejection of a tenant on a particular ground, viz., the ground that he had got himself entered as a khaikar. Such a suit could clearly be brought under Item 20 of the schedule read with Rule 3. Thus both the reliefs claimed in this suit could be claimed in the revenue Court under Rule 3 read with items 20

and 21 (b) of the Schedule to the rules for the revenue Courts in Kumaon. Section 3 itself lays down that no Court other than a revenue Court shall take cognizance of any dispute or matter in respect of which any suit or application might be brought or made before a revenue Court under the rules. This suit could not, therefore, have been brought in the civil Court and the civil Court had DO jurisdiction to take cognizance of it. The decision by both the lower Courts has, therefore, to be set aside and the plaint returned for presentation to the pro per Court I, therefore, allow this appeal, set aside the decree passed by the lower Court and order that the plaint be returned to the plaintiffs for presentation to the proper Court. In the circumstances of this appeal, I direct that the defendant-appellant shall, get his costs from the respondents in this Court and the parties will bear their own costs of the two lower Courts.

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