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Court : Allahabad

Decided On : Dec-13-1918

Reported in : 49Ind.Cas.721

Judge : Piggott and ;Walsh, JJ.

Appellant : Chhidda Singh and anr.

Respondent : Abdul Majid Khan and anr.

Judgement :

Piggott, J.

1. The plaintiff in this case are two out of a large number of defendants, against whom a suit for ejectment was brought in the Court of an Assistant Collector in respect of certain land described as the tenant holding of all the defendants. The Assistant Collector decreed the suit and his decree was executed by the formal ejectment of all the defendants. His decree was reversed by the Commissioner on appeal, and the Commissioner's order was affirmed by the Board of Revenue upon grounds wholly different from those on which the Commissioner had proceeded. The defendants or some of them, then went to the Assistant Collector and asked to be restored to possession. The decision on this application was much delayed by the institution on the part of the land-holders of a very ill-advised suit for a declaration in the Civil Court, which suit was contested up to this Court in second appeal and was dismissed. Finally the Assistant Collector decided that in

view of various facts stated in his order, he could only restore those defendants whose application was before him to possession over part of the area from which ejectment had been effected. This order was affirmed by the Commissioner in a carefully considered judgment which comes nearer to dealing with the merits of the dispute than any other decision pronounced in the course of this complicated litigation. The majority of the tenants against whom the ejectment proceedings were originally taken have by this time abandoned the struggle or come to terms with their land-holders. Twenty-eight of them have sought to carry the matter further by bringing this present suit, in which they claim in substance the relief which the Assistant Collector and the Commissioner refused to give them. Both the Courts below have found fault with the drafting of the plaint and the form in which the plaintiffs' claim is preferred; but they have dismissed the suit in substance, upon a finding that it is barred by Section 144 (2) of the Code of Civil Procedure. Two of the plaintiffs have brought the matter before this Court in second appeal. I think the Courts below were right. The argument before us has ranged over a wide field; but it seems to me that when one gets down to the essential nature of the present suit there is no real room for doubt. These plaintiffs, as successful appellants, have already been to the Court which passed the decree subsequently reversed on appeal and have received such restitution as that Court considered to be appropriate, or possible in view of the peculiar state of facts. I know of no case in which it has been held that such successful appellants have a further right of suit, upon the plea that the restitution ordered by the Court dealing with the matter in execution was incomplete or (to them) unsatisfactory.

2. I would, therefore, dismiss this appeal with costs.

Walsh, J.

3. I agree. I am inclined to think that the argument for the appellants with regard to the applicability of Section 144 is right, that is to say, in my opinion the suit which is barred by Sub-section 2 is a suit in the Court in which the relief by application could be obtained, but I do not think it is really necessary to decide this point, in this case an additional reason for not dismissing the suit on that ground alone is that the Revenue Courts have already decided in a judgment binding upon the

parties that the matter in dispute was one for the Civil Courts. Under the circumstances of this particular case the relief claimed is in substance restitution. It appears from the judgment of the Commissioner upon the application for restitution in the Revenue Court that to the extent to which restitution is now claimed, restitution was no longer possible and that having regard to the special circumstances of this case the most that the appellants were entitled to, if anything, was compensation or, in other words, damages for having been wrongfully deprived of their grazing rights by the act of the Zemindar in putting the land under cultivation. But such a claim would have to be made in a Civil Court, in answer to which it might be said that the present plaintiffs who are few in number have suffered no damage because the balance of grazing which has been restored to them gives them as much as they formerly enjoyed. But in any case this is not a suit for damages and it is not possible for us to change it into one. The result does, I think, substantial justice, provided that it is understood that this decision proceeds upon the footing that a large number of the tenants or lessees who have not joined in this suit have compromised with the Zemindar and cannot, therefore, share with the present plaintiffs in the grazing rights recovered by them.

4. We dismiss this appeal with costs.

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