

Shoember Singh and anr. Vs. Shoember Singh

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Court : Allahabad

Decided On : Apr-28-1927

Reported in : AIR1927All780; 103Ind.Cas.128

Appellant : Shoember Singh and anr.

Respondent : Shoember Singh

Judgement :

Kendall, J.

1. This is a second appeal by the plaintiff whose suit has been dismissed by both the lower Courts. The circumstances are briefly as follows: One Jodha Singh was an occupancy tenant in a holding of which the plaintiff-appellant is the sole zamindar. Jodha Singh died in 1919, leaving, it is alleged, no heir on whom the occupancy tenancy could legally devolve. Musammat Shiva Piari Kunwar, the widow of his brother, was admitted to the cultivation of the holding and recorded as a non-occupancy tenant with the permission of the appellant's agent. She instituted a suit for arrears of rent against the present defendant-respondent, and her suit was decreed by the first Court, but in appeal the two parties came to a compromise. The defendant thereafter made an application under Section 42, Land Revenue Act, to have his name recorded as the non-occupancy tenant of the holding. The application was opposed by Mt. Shiva Piari, and the plaintiff was a party to those proceedings. The decision of the revenue Court was that the name

of the defendant-respondent should be recorded as non-occupancy tenant of the holding, with the remark that he was the adopted son of Jodha Singh. The plaintiff, therefore, filed the present suit in the Civil Court for a declaration that the defendant is not the adopted son of Jodha Singh, and the lower Courts have dismissed his suit under Section 167, Agra Tenancy Act, 1901. Reliance has been placed by both the Courts below on the case of Jagannath v. Balwant Singh A.I.R. 1922 All. 372, a Letters Patent appeal of this Court.

2. It will be seen that the relief claimed by the plaintiff in the plaint, namely, a declaration that the defendant is not the adopted son of Jodha Singh is not a matter that could be finally decided in a revenue Court. The real contest, however, between the parties related to the occupancy tenancy. The plaintiff appellant's object as shown in para. 7 of the plaint was to dispossess the defendant of the holding. The circumstances in the case reported in the A.L.J. are very similar to those in the present case. The plaintiff's suit there was that the defendant was a non-occupancy tenant and that the adoption of the defendant by the former occupancy tenant was illegal. The relief sought in the plaint was a declaration that the defendant was not the adopted son of the former occupancy tenant but the object of the plaintiff was to prevent the defendant from establishing his claim to succeed to the occupancy holding, and it was decided that the ratio decidendi in all such cases must be what was the real contest between the parties and what was the real object of the suit. It was found that the proper course for the plaintiff was to bring a suit for a declaration under Section 95, Tenancy Act, and that in spite of the plea put forward by the plaintiff in regard to the adoption the civil Court had in the circumstances no jurisdiction.

3. An attempt has been made on behalf of the appellant by Mr. Bajpai to distinguish the present case from the one reported in 20 A.L.J. He argues that the case put forward here by the plaintiff is not that the defendant is a non-occupancy tenant, but that he is a trespasser, and, therefore, no suit under Section 95, Tenancy Act could lie in a revenue Court. As a matter of fact it is nowhere clearly stated in the plaint that the defendant is a trespasser, and if the plea is accepted now, it will also be necessary to allow the plaintiff further to amend his plaint and to sue for possession in order to comply with the provisions of Section 42, Specific

Relief Act. Even if we shut our eyes to these difficulties, however, it appears to us to be clear that the question of whether the defendant is a trespasser or a tenant has been decided by the proceedings under Section 42, Land Revenue Act. The plaintiff was a party to those proceedings and he made no appeal against the decision that the defendant was a non-occupancy tenant. It was suggested that the decision of a revenue Court in miscellaneous proceedings under Section 42, would not prevent the plaintiff from establishing his claim in the civil Court. The last sentence to Section 44 read with Section 32, however, makes it clear that this is not the case. The entries in the register referred to in Clause (a) to (d), Section 32, may be challenged in the civil Courts. They relate to matters of proprietary title. The entries referred to in Clause (e), Section 32, are expressly excluded from the last sentence to Section 44. They relate to persons cultivating or otherwise occupying land as distinct from proprietors, under-proprietors, and revenue free holders, and it appears, therefore, to be quite clear that the final decision in these cases would rest with the revenue Courts, and will be binding on the parties to the proceedings. The decision in these proceedings that the defendant is a non-occupancy tenant is, therefore, binding on the plaintiff, and it is fruitless to speculate what would be his position if it were open to him now to plead that the defendant is a trespasser and not a tenant. For these reasons we dismiss the appeal with costs.