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Court : Allahabad

Decided On : Nov-23-1912

Reported in : 17Ind.Cas.522

Judge : Chamier, J.

Appellant : Pooran Singh

Respondent : Jai Singh and ors.

Judgement :

Chamier, J.

1. On June 14th, 1907, the defendant gave the plaintiffs a bond for Rs. 400 and on the same day gave them a lease of his occupancy holding in which it was provided that the rent was to be retained by the plaintiffs on account of the interest payable under the bond. It was conceded by the plaintiffs in the Courts below and it is also obvious that the two documents should be read together and that the intention was to make an usufructuary mortgage of the holding. The plaintiffs entered into possession of the holding but were ejected by the Revenue Authorities. In the present suit, the plaintiffs claim a decree for the principal sum due under the bond. The Munsif dismissed the suit holding that the contract was illegal having been designed to render the provisions of the Tenancy Act nugatory as, no doubt, it was. On appeal, the District Judge held that as the defendant had caused the plaintiffs to be ejected from the holding, he was bound to re-pay the amount

advanced on the bond so that both parties might be restored to the positions occupied by them before the transaction. In my opinion, the decision of the District Judge was erroneous. If the transaction had been carried out by means of a single document, it is clear on the authorities that no suit would have lain to enforce payment of the mortgage money or any part of it, see the decisions in *Bhikham Singh v. Har Prasad* 19 A. 35 : A.W.N. (1896) 167; *Murlidhar v. Pem Raj* 22 A. 205; *Depan Rai v. Ram Khelawan Rai* 7 A.L.J. 330 : 5 Ind. Cas. 557 : 32 A. 383 and *Khaja Ikram-ullah Khan v. Moti Chand* 8 A.L.J. 826 : 33 A. 695 : 11 Ind. Cas. 17. The fact that the parties with a view to evading the provisions of the Tenancy Act carried out the transaction by means of two documents can make no difference. The learned District Judge has relied upon the decision in *Bahoran Updhaya v. Uttamgir* 8 A.L.J. 931 : 33 A. 779 : 12 Ind. Cas. 112 in support of the view which he took. That case seems to me to have no bearing upon the present case. There the plaintiff was asking the Court to restore him to the possession of an occupancy holding which he had mortgaged to the defendant and it was held that he was not entitled to a decree except on re-paying the sum borrowed from the defendant upon the mortgage. In the present case, there is no question of putting the plaintiffs upon terms and there is no room for the application of any equity. The plaintiffs are seeking to enforce an illegal contract as in several of the cases cited above. The present case seems to be covered by the authorities and I must hold that the suit should have been dismissed.

2. But the claim is for a simple money decree for Rs. 400 and the question arises whether a second appeal is not barred by Section 102 of the Code of Civil Procedure. Prima facie the suit is of a nature cognizable by Courts of Small Causes and the learned Counsel for the defendant-appellant is unable to show that the suit falls within any of the Articles of the second Schedule to the Provincial Small Cause Courts Act. He referred to Article 6, but that Article applies only to suits for foreclosure for sale or for redemption of a mortgage. The present suit is clearly not a suit of the kinds contemplated by Article 6. Counsel for the appellant in the last resort asked me to treat this appeal as an application for revision under Section 115 of the Code of Civil Procedure and he contended, on the authority of the case of *Ross Alston v. Pitambar Das* 25 A. 509 : A.W.N. (1903) 104 that this Court could set aside the decision of the District Judge in the present case in the

exercise of its revisional jurisdiction. Elsewhere, I have declined to follow the decision just mentioned but I should have felt myself obliged to follow it in this Court, if it were not for the fact that it is commonly regarded as having gone too far and has in several cases not been followed in this Court. Moreover, the question decided by the Subordinate Court in that case is different from that decided in the present case. In my opinion, the District Judge did not fail to exercise a jurisdiction vested in him or exercised a jurisdiction not vested in him or act in the exercise of his jurisdiction illegally or with material irregularity.

3. It is merely a case of what I consider an erroneous decision of a question of law and this Court cannot interfere in revision. It is, therefore, useless for me to treat this appeal as an application in revision. I dismiss the appeal as barred by the provisions of Section 102 of the Code of Civil Procedure. The appellant must pay the respondent's costs.

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