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Court : Allahabad

Decided On : Nov-01-1928

Reported in : AIR1929All341

Appellant : Suraj Pal Singh

Respondent : Ramjit

Judgement :

1. The litigation which has given rise to this appeal arises under the Agra Tenancy Act. It appears that Ramjit, the defendant-respondent before us, was % non-occupancy tenant of a certain holding of which the owner was the plaintiff-appellant, Raja Surajpal Singh, the Raja of Avagarh.

2. It is admitted that the plaintiff, as zamindar, took steps under Sections 58 and 63, Agra Tenancy Act, Act 2 of 1901, to eject the defendant Ramjit. The zamindar got a decree for ejectment, and on 26th September 1922, the zamindar was awarded possession. At p. 27 of the record there is the dakhalnama showing the delivery of possession to the zamindar. The entire holding was one of 27 bighas odd of which 22 bighas odd were held by sub-tenants. It seems that out of this area an area of 18 pukka bighas was under rose cultivation. These lands are situated in a part of the Aligarh district where the industry of rose growing for purposes of perfumery is well established.

3. Having got a decree for ejectment there were two courses open to the landlord. Under Section 75(1), Tenancy Act, it is provided that if at the date on which ejectment takes effect there are ungathered crops or other products upon the land, the landholder shall have the option of purchasing the same, and upon his forthwith tendering the price of the same to the tenant, the right of the tenant to such crops or other products and to use the land for the purpose of tending, gathering and removing the same shall cease. Sub-section 2 of the same section provides that if the landlord does not elect to purchase the ungathered crops, the tenant shall be entitled to use the land as aforesaid for a further period until such crops or other products have been gathered and removed paying a fair rent therefor.

4. In the present case the landlord exercised his option under Section 75(1) of the Act and so it became necessary to determine the amount which the landholder was liable to pay for the ungathered crops or other products. The landlord apparently made an application to the Court offering Rs 43-6-0 as being an adequate compensation for the ungathered products this offer was contested, the defendant Ramjit putting forward the case that he had a very valuable crop for which he was entitled to demand compensation to the tune of Rs. 20,000. The case was eventually decided in the Court of a first class Assistant Collector, Mr. Mahadeo Prasad. He was of opinion that the landholder was bound to pay Rs, 12,000 compensation for the rose crops. From this he deducted a certain amount which was due to the landlord for arrears of rent and made the Raja liable to pay to Ramjit the sum of Rs. 11,338-14-10. It was argued before us that the procedure of the Assistant Collector was wrong and that he had acted on a wrong system of valuation, and indeed the contention was put forward in the course of the argument that it was open to the landlord, after the amount of compensation had been determined, either to pay that amount or to allow the tenant to remove the ungathered products. This argument, however, cannot be accepted for it seems perfectly plain to us that the landlord is bound to exercise his option under Section 75, Tenancy Act, before he comes into Court to make an offer or to apply for immediate possession of the lands; and we are clear that if the option is once exercised the landlord cannot resile from it. Here, as we have said, the landlord came into Court and exercised the option of purchasing the ungathered crops.

Having done that he was bound by his choice.

5. There remains the question of the valuation. It seems that at first the parties agreed to the appointment of a commissioner, a gentleman named Thakur Bijay Singh, on whose report they both thought they could rely. Bijay Singh inspected the place and heard certain evidence produced by the parties. His report is printed at p. 19 of the record and it is clear that he had some difficulty in making up his mind as to the amount he was prepared to assess by way of compensation. However, he adopted a system of calculation which he explains in his report and at p. 20 we find that he came to the conclusion that Rs. 1,950 would be a suitable compensation for the defendant Ramjit.

6. Both parties were dissatisfied with the commissioner's report and ultimately the case was referred to the Court of Mr. Mahadeo Prasad, the Assistant Collector who has finally decided it. We may remark here that at one stage of the case Ramjit, the defendant, offered to let the case be decided by the Raja himself and the papers were sent to him but the Raja very properly, in our opinion, declined to give a decision in a case in which he was interested himself.

7. The learned Assistant Collector seems to us to have tried various ways in which the amount of compensation for these rose trees should be assessed. It is complained here that he based his decision in part, at any rate, upon two decisions which are said to have been passed awarding compensation for rose crops in this village of Barwana. In his judgment the learned Assistant Collector refers to two cases, Nos. 5 and 6 of mouza Barwana, which were decided on 19th March 1924. It is complained here that these cases should not have been considered and it is also made a matter of complaint that there is no trace of one of the cases to which the learned Assistant Collector refers. As an alternative method of assessing the value of the rose trees the learned Assistant Collector, finding that there were 60,000 rose bushes on this holding, assessed them at an average value of 4 annas each on which basis the compensation would come to Rs. 15,000. Then he tried another method of assessment by taking into account the average annual profit derived from the sale of rose flowers-Eventually by a combination of all these methods he arrived at a decision that Rs. 12,000

represented a fair amount as due.

8. We think that the decision of the Assistant Collector is open to attack on the ground suggested, namely, that he did not follow a proper method of valuing the crop. We refer here to a case decided by the Board of Revenue in the year 1892, a case which, as far as we know, has been followed ever since. *Abdul Baki v. Mathura Prasad* [1893] A.W.N. 24. There again the case was one of a holding on which roses were being grown for the purpose of making perfumery, and it was held by both members of the Board that for purposes of awarding compensation the value not merely of the flowers of the rose bushes for one year but of the bushes themselves was to be taken into consideration. Mr. Kaye, the Junior Member, said that as rose plants, once they were planted, lasted for many years, it would be inequitable to give compensation only for the flowers that might be on the trees at the time of ejectment. Incidentally we may observe here that as the ejectment in this case took place in September 1923, there could not have been any crops of rose blooms ready at that time.

9. Mr. Reid, the Senior Member, in the judgment just referred to, laid down the same principle. He said that rose and jasmine plants go on bearing flowers for several years and possess a value for the cultivator as long as they do so. He laid down as the principle to be adopted in determining compensation that the price of the plants as growing crops was to be estimated at their present value to the cultivator of the land with reference to their age, condition and prospective flower producing capability.

10. That case has been followed by a Bench of this Court in the case of *Ram Prasad v. Suba Rai* [1910] 32 All. 458.

11. It seems to be well established in the present case that the rose plantation which was in the possession of the defendant and his sub-tenants was in good condition. When Thakur Bijay Singh made his report on 26th September 1924, he said that the crop was in good condition except one field the area of which he took to be about 8 bighas kham. A similar inspection note was recorded by the Assistant Collector himself. This is to be found at p. 21 of the record. We think we ought to take it, therefore, that the rose plants were in good condition and were

capable of bearing a good crop. It is true that Ramjit admitted in his deposition that the plants had been planted over 30 years ago. It is doubtful, however, whether he meant by this statement that every bush standing on the 18 bighas under rose cultivation was planted at that time or whether he meant only that the plantation had been begun 30 or 35 years before these proceedings. However that may be, we think it ought to be assumed now that the plants were in good condition and capable of producing a full crop.

12. The only way in which we can have this case decided is by remitting an issue to the Court below and both parties ought to be allowed to give such evidence as they can put forward. The Assistant Collector will, after taking this evidence, come to a finding as to the value of the rose plants at the time ejectment proceedings took effect and in coming to his conclusion he will be guided by the principle laid down by the Senior Member of the Board of Revenue in Abdul Baki's case [1893] A.W.N. 24 above referred to, namely, that he has to ascertain their present value to the cultivator of the land with reference to their age, condition and prospective flower producing capability at the material date. The finding ought to be returned to us within two months and after the return of the finding ten days will be allowed to the parties for objections.

13. [On receiving the findings their Lordships delivered the following judgment]

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