

Dhani Ram and ors. Vs. Sumer Chand and ors.

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Court : Allahabad

Decided On : Oct-27-1926

Reported in : AIR1927All182

Appellant : Dhani Ram and ors.

Respondent : Sumer Chand and ors.

Judgement :

1. We think this appeal ought to be allowed. The matter is a simple one and arises out of proceedings taken under Section 144 of the Civil P.C. by Dhani Ram and others.
2. These applicants are persons who took a transfer of certain property from a man named Sumer Chand.
3. In the year 1918 a suit was brought against Sumer Chand and certain others by certain members of the family to which Sumer Chand belonged. That was a suit in which the plaintiffs sought to set aside certain dispositions of property made by Sumer Chand and his father Panna Lal who had been the head of a joint Hindu family of which the plaintiffs were members. In that suit the present applicants-appellants were impleaded as being transferees from Sumer Chand.
4. That suit was successful in the Court of first instance which held that the plaintiffs were entitled to possession of the property in suit by avoidance of the transfers made by Sumer Chand and others.

5. When that decree was passed the present petitioners-appellants Dhani Ram and others submitted to it and delivered to the plaintiffs' possession of the property which they had acquired from Sumer Chand.

6. Sumer Chand and Panna Lal, however, appealed to this Court against the entire decree and on the 2nd of June 1922, a Bench of this Court gave judgment allowing the appeal and dismissing in to the suit which had been brought in the Court of first instance.

7. We have adverted to the fact that the present petitioners Dhani Ram and others had not appealed nor made themselves parties to the appeal, but we may mention here that when the appeal was filed the plaintiffs-respondents filed an objection under C. 41, Rule 22, asking that the transferees from Sumer Chand should be made liable to the plaintiffs-respondents for mesne profits.

8. We have before us the paper-book of the appeal (No. 147 of 1920). It does not appear from the print that Dhani Ram and others were actually impleaded as parties but we think it does not lie in the mouth of the plaintiffs-respondents who under the cross-objections sought relief against Dhani Ram and others to say that they were not parties to the appeal. At any rate it is quite clear that the respondents in the appeal were asking relief against them.

9. Be that as it may, it is quite clear that the effect of the High Court decree is altogether to vacate the decree which had been passed in the Court of first instance.

10. It was under stress of that decree that the present petitioners-appellants surrendered possession of the property, and plainly the intention of this Court was that the status quo should be restored, and we, therefore, think that if such an order can possibly be made these appellants ought to be restored to possession of the property of which they had been wrongly deprived.

11. It was for the purpose of obtaining this possession that they made an application under Section 144 of the Civil P.C. It appeared that the Judge of the Court below somewhat unwillingly refused the application on the ground that the

petitioners were not entitled to make it by reason of their having failed themselves to appeal against the decree. We should be very reluctant to determine the case on this consideration. Section 144, Sub-section (1) lays down that:

where and so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party, entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reserved.

12. It seems to us that Dhani Ram and others who appear before us as petitioners come within the benefit of Section 144. It is not to be denied that they were parties to the suit and under Section 144 we think they are entitled to be placed in the position which they would have occupied but for the decree which was passed by the Court of first instance—a decree which was subsequently reversed on appeal by this Court. The order of the Court below is based on a highly technical ground. We think, perhaps, that the petitioners would have been well advised to have joined Sumer Chand in their application. They derived their title from Sumer Chand and if he had been made a party to this application for restitution under Section 144 it would not have been possible for the Court below to refuse it. We are satisfied in every way that this is a proper case in which an order under Section 144 should be made. We think the learned Judge of the Court below ought to have made it.

13. Possession which was surrendered under the decree of the first Court must be restored to the person from whom such possession was received. It may be as stated before us by Dr. Agarwala, that there is some finding of the first Court that the transfer by Sumer Chand in favour of the present petitioners appellants was fictitious. That, however, is a matter which cannot be called into question by the respondents to this appeal, who have now no concern whatever with this property. We, therefore, allow this appeal and send the case back to the Subordinate Judge for the purpose of taking steps for restoring these petitioners to the possession of the property from which they were dispossessed under the first Court's decree. No order as to costs.

