

Munna and ors. Vs. Baij Nath

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SooperKanoon Citation : sooperkanoon.com/475007

Court : Allahabad

Decided On : Nov-23-1926

Reported in : AIR1927All212

Appellant : Munna and ors.

Respondent : Baij Nath

Judgement :

Iqbal Ahmad, J.

1. This is a plaintiffs' appeal and arises out of a suit for ejectment of the defendant under Section 58 of the Tenancy Act, The plaintiffs were admittedly occupancy tenants of the holding comprising the plots in dispute. The plaintiffs case was that the defendant was in possession as their sub-tenant and as such was liable to ejectment.

2. The defence to the suit was that the relation of landholder and tenant did not exist between the parties, and that the plots in dispute were once in possession of Kallu and Madhol, who left the village and then the defendant entered into possession of the same about six years prior to the institution of the suit in the capacity of a zemindar.

3. The trial Court held that the holding belonged to several co-sharers, and that the rent of the holding was actually realised by Chandra Shekher lambardar and by

another co-sharer named Raj Bahadur, and the defendant never collected any portion of the rent due in respect of the holding. It further held that there was no evidence to show that the defendant ever illegally dispossessed the tenants in possession of the plots in dispute. On these findings it held that the relation of landholder and tenant existed between the parties and decreed the plaintiffs' suit.

4. On appeal by the defendant the lower appellate Court has held that

Madhol alone had no right to relinquish these plots to the defendant-appellant without the consent of his co-sharers in the holding; and it is not shown that the said co-sharers either gave such consent or subsequently ratified the relinquishment.

5. It further went on to observe, that if it be held that the silence of the plaintiffs amounted to a ratification of the alleged relinquishment by Madhol, the plaintiffs will not be entitled to a decree for ejectment but if such a ratification could not be presumed from the circumstances of the case, then it held that the defendant's possession must be held to be wrongful, and the only remedy open to the plaintiffs in that case was a suit for ejectment under Section 79 of the Tenancy Act, and no such suit having been filed within six months from the date of possession of the defendant, the plaintiffs' remedy to recover possession of the plots in dispute had been extinguished. It further observed that there was no evidence to show that the defendant ever paid or agreed to pay rent to the plaintiffs-appellants and that

The onus was on the plaintiffs-respondents to show that the person whom they seek to eject as a tenant is in fact their tenant and this onus has not been discharged.

6. On these grounds it reversed the decree of the trial Court and dismissed the plaintiffs' suit.

7. In my opinion, the decree of the lower appellate Court cannot be supported. It is common ground that the defendant-respondent is recorded as a sub-tenant in the Record of Rights and all entries in the Record of Rights including the entries made in accordance with the provisions of Section 55 of the Land Revenue Act must, in

accordance with the provisions of S.,57 of the same Act, be presumed, to be true until the contrary is proved. In the present case there was nothing to show that those entries were wrong.

8. Further it being admitted that the plaintiffs were once the occupancy tenants of the said plots the defendant, unless he succeeds in proving that the plaintiffs' right as occupancy tenants of the plots in dispute has been extinguished, is liable to be treated as a tenant in accordance with the provisions of Section 34 of the Tenancy Act read with Section 4(5) of the same Act. Even if it be presumed that the defendant occupied the land without the consent of the plaintiffs-appellants he was liable to pay the rent payable in the previous years or at such rate as the Court determined to be fair and equitable, and as such the defendant was a person by whom the rent was payable and was a tenant of the plaintiffs.

9. It only remains to observe that the decision of the lower appellate Court that the only remedy of the plaintiffs was by a suit under Section 79 of the Tenancy Act cannot be supported in view of the decision of this Court reported as Rani v. Aidal Singh A.I.R. 1924 All. 431. It is admitted that the defendant is only one of the body of co-sharers owning the mahal in which the holding in dispute is situate and as such even if he ejected a tenant otherwise than in accordance with the provisions of the Tenancy Act, Section 79 of the Tenancy Act will have no application. '

10. For the reasons given above I hold that no valid defence was available to the defendants in the present suit and the suit was rightly decreed by the trial Court.

11. The result is that I allow the appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance with costs in all Courts.