

Sukhan Singh and ors. Vs. Uma Shankar Misir and ors.

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Court : Allahabad

Decided On : Sep-21-1934

Reported in : AIR1935All65; 152Ind.Cas.663

Appellant : Sukhan Singh and ors.

Respondent : Uma Shankar Misir and ors.

Judgement :

Niamatullah, J.

1. These two appeals arise out of proceedings under Section 144, Civil P.C. The appellants objected to restitution being made under Section 144, Civil P.C., to a lady named Chandrajota Kunwar, so far as it was claimed in denial of the appellants' rights as statutory tenants. The lower Court dismissed the appellants' objection and delivered actual possession of the lands in dispute to Mt. Chandrajota Kunwar. It appears that the Collector of the Benares, who was in charge of the estate known as Sakaldiya estate, instituted a suit, against Mt. Chandrajota Kunwar for setting aside an agreement and for possession of property of which the lands now in dispute were parts. It is not necessary to enter into the details of the controversy between the parties to that suit. Suffice it to say, that it was a suit for inter alia, the relief of possession against Mt. Chandrajota. The suit was decreed by the Court of first instance on 17th March 1930, and possession was delivered to the Collector on 26th May 1930. Chandrajota

preferred an appeal to this Court, which reversed the decree of the Court of first instance on 5th September 1933, and dismissed the Collector's suit. Mt. Chandrajota then applied for restitution under Section 144, Civil P.C., praying for delivery of possession of the property which had been taken possession of by the Collector in execution of the decree of the first Court, since reversed by the High Court. She impleaded in her application the present appellants who claimed to be tenants admitted by the Collector in the interval after delivery of possession to him before the decision of the High Court.

2. It is not disputed that the lands now in dispute were originally cultivated by certain tenants who were actually in possession when the Collector took delivery of possession. It is mentioned in the judgment of the learned Sub-Judge that those tenants were dispossessed and the officials of the Court of Wards let the lands to the appellants at lower rents. The learned advocate for the appellants has referred me to the statement of the patwari, who says that the original tenants themselves relinquished the lands in dispute and thereupon the officials of the Court of Wards let the lands to the appellants. In my opinion it makes no appreciable difference if the case is decided on the assumption that the out-going tenants had voluntarily relinquished the land, which was subsequently let to the appellants by the officials of the Court of Wards. The appellants claim that Mr. Chandrajota Kunwar is not entitled to actual possession as against them, as they became statutory tenants under Section 19, Agra Tenancy Act, because they were admitted as tenants by the Collector, who was then in possession as proprietor. The principal question between Mt. Chandrajota and the appellants in the lower Court was whether they were statutory tenants, as claimed by them; if not, Mt. Chandrajota's right to take actual possession can hardly be said to be in doubt.

3. Section 144, Civil P.C., makes it imperative, where a decree passed by the Court of first instance is reversed on appeal that the Court should place the winning party in the position which he or she would have occupied but for such decree. Mt. Chandrajota is entitled to have her land restored to her free from all encumbrances, including any tenancy that might have been created in the meantime by the party who was successful in the first Court but eventually was found to have no title to the land. Restitution under Section 144 can be claimed not

only against the opposite party, but also his representatives or persons deriving title from him. The terms of Section 144 present no difficulty to my mind and I have no hesitation in holding that, unless Section 19, Agra Tenancy Act, on which reliance is placed by the learned advocate for the appellants, leads to a different conclusion, Section 141, Civil P.C., in terms applies to the facts of this case.

4. My attention has been drawn to *Rajjabali Khan v. Faku Biri* 1932 Lab. 29, which is strongly relied on by the learned Counsel for the appellants. The facts of that case are complicated, and it may be that, in the peculiar circumstances thereof, the conclusion arrived at by the learned Judges was correct. There are however some observations which, I regret, I am unable to accept. In that case one Rajjabali had instituted a suit for possession against the defendant and obtained an ex parte decree. He executed certain sub-leases in favour of third persons. Subsequently the ex parte decree was set aside, and Rajjabali's suit was eventually dismissed. The successful defendant applied for restitution against the sub-lessees let into possession by Rajjabali. The learned Judges held:

That the sub-leases were created by Kajjabali in favour of the opposite parties Nos. 13 to 23 not under the decree nor as a direct or immediate consequence of it, and, as the said defendants were strangers to the litigation and were in no sense the legal representatives of Rajjabali, no order of restitution should have been made against them.

5. With all respect I am unable to accept the view that the lessees cannot be considered to be the 'representatives' of their lessors as against a person who is found to be the real owner of the land and who was temporarily dispossessed by the lessor. The words 'legal representatives' have not been used in Section 144, but it casts a duty on the Court to place the parties in the position, which they would have occupied but for the decree subsequently reversed. This cannot be done, unless the lessees introduced after the decree of the first Court be removed from possession. In the case noted above the learned Judges have made some remarks on the use of the words 'so far as may be' in Section 144.

6. There might have been difficulty in that case in removing the sub-lessees having regard to the provisions of the tenancy law there in force. I do not see any

difficulty in removing the appellants in this case unless they are protected by Section 19, Agra Tenancy Act, which I shall presently consider.

7. Section 19, Agra Tenancy Act, provides that subject to the provisions of Sub-section 3, Section 8 (which need not be considered in this case), every person who is, after the commencement of this Act (Act No. 3 of 1926), admitted as tenant without a right of occupancy to land other than sir, grove-land, pasture-land, or land covered by water and used for the purpose of growing singhara or other similar produce, shall be called a statutory tenant and, subject to the provisions of this Act, shall be entitled to a life-tenancy of his holding. It is contended that the section does not expressly state as to who is entitled to 'admit' to tenancy. It is said that any one for the time being in possession of a proprietary tenure-though he may be subsequently found to have no title to it - has power to admit to tenancy. In my opinion this line of reasoning is untenable. If a trespasser takes forcible possession of land belonging to another, and during the pendency of the suit brought by the owner against the trespasser, the latter admits third persons as tenants, it is, in my opinion, an impossible proposition that the successful plaintiff cannot take actual possession. If the contention put forward before me, be accepted as sound, the person for the time being in possession though a trespasser can saddle the real owner, who is struggling for the recovery of his property with tenants, who may be highly undesirable from his point of view. Such a view is not only opposed to natural justice but, in my opinion, offends against Section 52. T.P. Act, which clearly provides that, during the pendency in any Court of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question the property cannot be transferred or otherwise dealt with. It cannot be reasonably contended that, during the pendency of a suit, in which certain lands are in dispute, admitting tenants to those lands is not 'dealing with' the lands. I can make no distinction between a, case in which a person taking forcible possession of land lets it out to tenants during the pendency of the suit brought for its recovery and the case of a person who takes possession of it in execution of a decree passed by the first Court but subsequently reversed on the finding that he has no right to the land erroneously decreed to him. In either case the character of his possession is the same, viz., wrongful. In my opinion, Section 19, Agra Tenancy Act, confers statutory rights upon tenants who are

admitted as such by the person having the right to let. A person in wrongful and temporary possession of land has no right to let, and cannot consequently create Statutory rights by admitting others as tenants.

8. It is argued that Mt. Chandrajoti, was entitled to receive rent from the tenants who occupied the lands before the Collector took delivery of possession and that she is entitled to receive it now from the present incumbents, so that she would be practically restored to the position which she occupied, even if the appellants are recognized as statutory tenants. I am unable to accept this view. The amount of rent is not the only consideration which weighs with a landholder. The appellants may be undesirable tenants from her point of view and, in any case, they may not be as good as the tenants who occupied the land when she lost possession. I hold that the position of the appellants as tenants, statutory or otherwise, is not consistent with the position which Mt. Chandrajoti Kunwar occupied when she lost possession.

9. The learned Counsel for the appellants argues that the appellants are, at the worst, persons taking or retaining possession of the lands in dispute without the consent of the landholder under Section 44, Tenancy Act, and that a suit for their ejectment must be brought in the Revenue Court, which has exclusive jurisdiction. It is true that Section 230 provides that all suits and applications of the nature specified in Schedule 4 shall be heard and determined by the Revenue Courts and that in Schedule 4, Group B, suits under Section 44 for ejectment of trespassers are mentioned. If Mt. Chandrajoti Kunwar had instituted suits in a civil Court for recovery of possession against the appellants, treating them as trespassers, the argument would fall to be considered. In the case before me, the position is materially different. The lady is applying for restitution, and in doing so prays for actual possession under Section 144 against the Collector and those claiming title from him. In my opinion Section 230, Tenancy Act, relied on, has no application to the circumstances of the present case.

10. For the reasons stated above, I hold that the lower Court took a correct view of the rights of the parties. These appeals are dismissed under Order 41, Rule 11, Civil P.C.

