Hoti Lal Vs. Chuttan Lal

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Court : Allahabad

Decided On : Jun-18-1917

Reported in : AIR1970All270; 42Ind.Cas.898

Judge : Walsh, J.

Appellant : Hoti Lal

Respondent : Chuttan Lal

Judgement :

1. The main question in this appeal really is whether a landlord suing a tenant, who has been in occupation of his land without an agreement and without a decree of the Court fixing the rent under the Tenancy Act, can sue him in one suit for the determination of the amount and also for the arrears of rent payable for the period during which the tenant has been occupying it without paying anything.

2. A number of authorities have been cited, by some of which at any rate I am not bound, showing that after the tenancy has been determined, the landlord cannot recover the arrears of rent unless he has during the tenancy either an agreement fixing the amount of the rent or has obtained a decree of the proper Court fixing such amount. In each of those oases the suit for arrears of rent was brought after the ejectment and was, therefore, irrelevant to the present discussion.

3. It is admitted, and indeed cannot be denied, that the plaintiff in this case, the tenancy being still in existence, could have sued for a declaration under Section

95, and have brought his suit for that declaration in the Court in which this suit was commenced. It is also admitted, and could not be denied, that had he done so and obtained a declaration determining the amount of the rent, he could then have brought another suit also in the Court in which this suit was brought for the arrears of rent. In substance the plaintiff has in this suit combined those two claims. One of the contentions on behalf of the appellant is that he has no right to do that, but that he is bound to take what is graphically described as a preliminary 'canter' in the same Court over the same course against the same tenant with precisely the same subject-matter and to obtain a separate decree. Had there been any authority indicating that that was the correct view of the law, I should have referred this matter to a Full Bench. There being no authority I decline to hold anything so entirely, to my mind, contrary to equity, justice and common sense. It seems to me not only that he ought to be allowed to combine two such claims in one suit but that he ought to be compelled, if possible, to do so, and be penalised as regards costs if he brought two suits for what in substance is the same subject-matter. If there were no other considerations, the prevailing one is that it is in the public interest that there should be a determination of litigation, viz., that the subject-matter in dispute between the parties should be brought to a head and finally determined once and for all. I think in substance that is what the plaintiff sued for in this case, although the plaint is not artistically framed. In paragraph 9 he alleged that the defendant was liable to pay a rent. In paragraph 7 he alleged it is true that the rent had been determined and assessed by the arbitrator at Rs. 105 and he asked merely for payment upon that footing. I think that was only one way of stating that his case was that the rent ought to be Rs. 105, that Rs. 105 was a fair rental value and he asked the Court to determine that amount of rent in his favour. If amendment were necessary. I am prepared to allow such amendment as is required to make the plaint in form comply with what I think, the plaintiff clearly claims in substance. I think there is no substance in the appeal as there are no merits in the defendant's case.

4. Unfortunately, the matter has become complicated by various side issues which have been raised both here and in the Courts below, and I will, therefore, proceed to deal with what, I think, are merely subsidiary points. Firstly, it was said that the defendant had become an occupancy tenant. There is no finding of fact on this

point. I think it is not relevant. It will be time enough to consider that when he is sued for ejectment. Secondly, it was said that the lower Appellate Court had fixed this rent under Section 34 of the Tenancy Act, That of course is a mistake. Section 34 of the Tenancy Act does not apply and the respondent's Counsel candidly admits that this case is not based upon that section. It is quite dear, however, that the lower Appellate Court went the right way to assess the rent that was properly payable to the plaintiff; and it would appear from the judgment of the learned Judge that Section 34 was treated by both parties in the lower Appellate Court as the relevant section. The attitude adopted by the defendant's representative in the lower Court appears to have been that the only question was one; of fact, namely, what was the correct amount to be fixed, I think, therefore, that the conduct of his representative is fatal to the appellant's case. I wish to repeat what I have said over and over again that the parties are bound by the conduct of their Counsel in Court and if a party's Advocate chooses to allow the lower Appellate Court to fix the rent in dispute by the application of a section which is not applicable and the rent is fixed, then the decision is one on a question of fact. I am of opinion that the party cannot turn Pound in this Court and raise a totally different aspect of the question.

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5. Since the delivery of the above my attention has been drawn by the appellant's Counsel to a case reported as Ram Charan Lal v. Karim-un-nissa Bibi 26 Ind. Cas. 121: 37 A. 12: 12 A. L. J. 1131, where it is said that it was never intended that the Court was to fix the amount of rent in proceedings under Section 95 of the Agra Tenancy Act of 1901. But that it was only intended that the Court under that section should ascertain what rent was in fact payable. It was in consequence of the appellant's contention that Section 95 was the section under which the plaintiff should have had his preliminary canter, that I referred to it and suggested that possibly an amendment was necessary of the plaint. That view appears by this decision which is binding upon me to be erroneous, so that no declaration under Section 95 and no amendment of the plaint would appear to be necessary. In the

case which 1 have referred to above [Ram Charan Lal v. Karim-un-nissa Bibi 26 Ind. Cas. 121: 37 A. 12: 12 A. L. J. 1131] decided by this Court, it is quite clear that the rent must be paid after it has been fixed either by agreement between the parties or through the Court--that I understand to mean the Revenue Court--and I adhere to my previous view that there is nothing in law to prevent the plaintiff during the tenancy, who is claiming the rent which ought to be fixed and is claiming the arrears of rent for; the year the tenancy is in existence, from making both those claims in one suit in the proper Court, namely, the Revenue Court. In fact, I think, he ought to do K it in one suit 'and not in two if he can. If it is not a claim which can be properly made in the Revenue Court at all that consideration would not affect the decision of this Court, because in any event an appeal would lie either from a Civil Court or from the Revenue Court as in this case to the District Judge, and, therefore, the decree of the District Judge in this case which, I think, declares the proper rent payable and orders all arrears to be paid, seems to me perfectly valid in law.

6. The appeal is dismissed with costs including in this Court fees on the higher scale.