

Sundar Lal Vs. Malthu

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Court : Allahabad

Decided On : Jun-07-1915

Reported in : AIR1915All321; 29Ind.Cas.710

Judge : Piggott, J.

Appellant : Sundar Lal

Respondent : Malthu

Judgement :

Piggott, J.

1. In this suit the plaintiff, who is the appellant here, sought a decree for the resumption of certain rent-free land, consisting of five specified plots with a total area of 5 bighas 4 liiswas, in the possession of the defendant-respondent. The suit was filed in the Court of an Assistant Collector of the first Class. He came to the conclusion that the grant in question was assnmable at the pleasure of the grantor, and he gave the plaintiff a decree accordingly. The defendant appealed to the District Judge. It would not appear from the judgment of the lower Appellate Court that any objection was taken in that Court with regard to the proper form of appeal. The learned District Judge found on the evidence, and principally on the interpretation of a particular clause in the wajib-ul-arz of 1872, that the grant in question was not resumable at the pleasure of the grantor. It does not seem that it was ever suggested, or was ever part of the plaintiff's case, that the grant was

liable to resumption under Clause (6) or Clause (c) of Section 154, Sub-section (1) of the Tenancy Act. The finding of the lower Appellate Court on this point amounts, therefore, to a finding that this land was not liable to resumption under Section 154 of the Tenancy Act. The learned Additional Judge went on to say: 'On the evidence I also find that this muafi has been held for 50 years and by two successors to the original grantee.' He accordingly declared the defendant, the holder of the said grant, to be the proprietor thereof under Section 158 of the Agra Tenancy Act. Having allowed the appeal to this extent, he sent back the case to the Court of the Assistant Collector in order that the matter might be finally determined in accordance with the provisions of Section 158 aforesaid by an order fixing the revenue payable by the defendant.

2. The plaintiff comes to this Court in second appeal. It is contended, first, that no appeal lay to the District Judge from the decision of the Assistant Collector. Undoubtedly a suit for the resumption of a ren-free grant or a suit for the assessment to revenue of a rent-free grant, is placed in the 4th Schedule to the Agra Tenancy Act in group C, that is to say, amongst suits triable by an Assistant Collector of the first Class in which appeal lies to the Revenue Courts. This specification in the Schedule must, however, obviously be read subject to the provisions of Section 177, Clause (c), according to which an appeal lies to the District Judge from the decree of an Assistant Collector of the first Class in all suits (no matter what may be the group of the fourth Schedule to which such suits are assigned) in which a question of proprietary title has been in issue in the Court of first instance and is a matter in issue in the appeal. In the present case the defendant had pleaded all along that the land in suit was not liable to resumption under Section 154, and that it had been held rent free for generations, or at least for a period of a hundred years. He expressly pleaded in fact that he was entitled under Section 158 of the Tenancy Act to be declared to be the proprietor of this land. The question whether upon these pleadings it can be said that a question of proprietary title has been in issue within the meaning of Section 177 Clause (c), would seem to be open the argument, but I find that the point is covered by authority. The appellant, no doubt, relies upon the decision of a Bench of this Court in *Baldeo Singli v. Mendan Singh* 6 Ind. Cas. 425 : 7 A.L. J. 818 and he is able to point out that in that case a suit apparently very similar to the present was

in fact appealed from the Court of the Assistant Collector to that of the Commissioner, and was thence taken to the Board of Revenue for final decision. It is clear, however, that the point which the learned Judges of this Court had before them for determination in that case was totally different from the question now before me. They had to decide whether a party who had failed in the Revenue Courts, in a suit to which the provisions of Sections 150 and 154 of the Tenancy Act applied, was entitled to challenge the decision of the Revenue Courts by means of a fresh suit instituted in a Civil Court as a Court of first instance. Such a suit the learned Judges held to be clearly barred by the provisions of Section 167 of the Agra Tenancy Act. That section, however, reserves the appellate jurisdiction of the Civil Courts in all cases to which Section 177 of the Act applies. Hence that ruling simply brings me back to the question whether or not the provisions of Section 177, Clause (c), apply to the appeal filed by the defendant in this case in the Court of the District Judge. I have been referred to two authorities on this point, one is an unreported decision by a single Judge, Nawab Bayed Ali Hasan Khan v. Mohan Das, Civil Revision No. 1 of 1907 decided on the 29th of April 1907. In that case a suit for resumption had been dismissed by the Assistant Collector in whose Court it was filed. The plaintiff appealed to the District Judge and the latter held that the appeal lay only to the Court of the Commissioner, and he returned the memorandum of appeal for presentation to the proper Court. This order was reversed by this Court in revision and the District Judge was directed to entertain and dispose of the appeal. The next case is the case of Sunder Singh v. Collector of Shdhjahanpw 11 Ind. Cas. 514 : 8 A.L.J. 539 : 33 A. 553. The head-note to the report, (8 A.L. J.,) refers to a different matter; but the report itself shows that the learned Judges distinctly held that the provisions of Section 177, Clause (c), of the Tenancy Act did apply to a case in which the pleadings were substantially the same as those in the case now before me. I accordingly overrule the appellant's contention on this point on the ground that it is concluded by authority.

3. In the second place, it is contended that the land in question in this suit is held rent free under a liability to resumption at the pleasure of the grantor, and that the finding of the lower Appellate Court to the contrary is based upon a misinterpretation of the documentary evidence viz, the wajib-ul-arz of the year 1872 A.D. In that document the land in suit is included in a specification of certain

rent-free holdings in respect of which it is said that they shall continue to be held rent free, but that, if at any time the proprietor desires to get them assessed to rent, he will bring a suit for that purpose in the proper Court and will be bound by the decision of that Court. There is certainly some ambiguity about these provisions. The learned District Judge, however, has relied upon a decision of the Board of Revenue in a case from that same district, which seems to have been regarded as a test case, and on which the Board of Revenue held that provisions in a *wajib-ul-arz* very similar to those in the document now before me did not constitute the grant resumable at the pleasure of the grantor. I am not prepared to say that the learned District Judge was wrong and I overrule this contention accordingly.

4. A third point has been argued before me, which presumably purports to be taken in the 1st, 4th and 6th paragraphs of the memorandum of appeal before me. In effect the contention is that the lower Appellate Court was not entitled, on the evidence before it to find that the land in question was a grant which had been held rent free for 50 years and by two successors to the original grantee. The learned District Judge, while recording this finding in express terms, has not discussed the evidence upon which it is based. The memorandum of appeal before me contains no certificate that this finding in the judgment of the lower Appellate Court rests upon no evidence. It has been suggested that the learned District Judge must have presumed that a certain entry in the *wajib-ul-arz* of 1833, which was put in evidence by the defendant, referred to the whole of the land in suit, whereas if that document be attentively examined it is evident that it can refer only to a portion of the said land. I should feel some difficulty in deciding whether even a misapprehension of this sort would justify interference in second appeal; but the learned District Judge had before him oral evidence as well. I am not entitled, sitting as a Court of second appeal, to appraise that evidence myself. But having read it along with the *wajib-ul-arz* of 1833, I can only say that I feel compelled to treat the decision of the lower Appellate Court on this point as a finding of fact with which I cannot interfere.

5. This appeal, therefore, fails and I dismiss it accordingly with costs.

