

Gulab Vs. Dalip

Gulab Vs. Dalip

SooperKanoon Citation : sooperkanoon.com/479765

Court : Allahabad

Decided On : Jul-12-1926

Reported in : 97Ind.Cas.550

Judge : Mukerji, J.

Appellant : Gulab

Respondent : Dalip

Judgement :

Mukerji, J.

1. This is an ex parte appeal. But Mr. Sandal has put the Court in possession of cases deciding both in favour of the view contended for by him and in favour of the view against his contention and I have, therefore, no difficulty in deciding the case.

2. The facts established are these. The respondent obtained a written lease from an occupancy tenant on the 1st of May, 1921, it having been agreed that he would be put in possession on the 1st of July, 1921. The occupancy tenant, however, did not put the respondent in possession, but, instead, put the appellant in possession. Thereupon the respondent brought the suit, out of which this appeal has arisen, claiming possession and mesne profits.

3. The Court of first instance dismissed the suit holding that it was cognizable by the Revenue Court alone and was, further, barred by six months' rule of limitation. The Appellate Court has decreed the suit, hence the appeal.

4. The contention for the appellant is that the respondent ought to have brought a suit under Section 79 of the Tenancy Act of 1901 and a suit in the Civil Court was not maintainable. It followed from this contention that, if Section 79 of the Tenancy Act applied, the short period of six months' rule of limitation would also apply.

5. The learned Appellate Judge held that the plaintiff never having obtained possession could not be said to have been 'ejected' within the meaning of Section 79 of the Tenancy Act and that, therefore, his claim was maintainable in the Civil Court and that the ordinary rule of limitation as laid down in the Limitation Act applied. He quoted two old cases reported as *Chait Ram v. Hira A.W.N. (1881) 54* and *Sukhdeo Prasad v. Sheobhajan A.W.N. (1904) 172*. These cases were decided under Act XII of 1881, Section 95, Clause (m). Under the old law and procedure a tenant 'wrongfully dispossessed' had to apply for relief in the Revenue Court under the aforesaid provision within six months of his dispossession. It has been held in the two cases cited by the learned Subordinate Judge that where a tenant had no initial possession he could not be said to have been dispossessed.

6. In the Act now in force (1901) the word 'dispossessed' has been displaced by the word 'ejected.' The meaning of the two words, however, is the same. A person who was never in possession before could not be said to have been ejected. The ordinary meaning of the word 'eject' according to Murray's English Dictionary is to expel or drive out from any place or position. According to Wharton's Law Lexicon a suit for ejectment is always a suit against a person in possession. Therefore, there can be no doubt that a person who was never in possession but being entitled to possession failed to recover the same cannot be said to have been ejected from the property over which he was entitled to have possession. This meaning was accepted in the case of *Collector of Benares v. Shiam Das* 28 Ind. Cas. 302 : 13 A.L.J. 329 by two learned Judges of this Court. There certain fixed-rate tenants who could transfer the tenancy as if they were proprietors of the holding made a simple mortgage and thereafter were ejected by the landlord. The

simple mortgagee after the ejectment of tenants brought a suit for sale and having purchased the tenancy himself sued the landlord in the Civil Court for recovery of the holding. It was held that the plaintiffs were never in possession and, therefore, could not be said to have been ejected.

7. The learned Counsel for the appellant refers me to three cases, Ram Lal v. Chunni Lal 27 A. 372 : 2 A.L.J. 69, Sri Mahant Bramha Khushal v. Sumera 18 Ind. Cas. 957 : 11 A.L.J. 310 : 33 A. 299 and Badri Kasodhan v. Sarju Misir 22 Ind. Cas. 668 : 12 A.L.J. 29 : 36 A. 55, and argues that there is an equally strong trend of authorities against the view taken by the lower Appellate Court. In these cases, which I have examined a tenant died and the person who-claimed to be entitled as the heir of the tenant never obtained possession and sought recovery of possession as against the landlord and the person to whom the landlord had let out the tenancy. It was held that the suits which had been instituted beyond six months of the death of the tenant were time-barred. The cases were (with respect) all rightly decided. The fact that the tenant died should not make any difference in the continuance of the tenant in the eye of the law. As soon as a tenant dies his heir-at-law would be entitled to the possession without any reference to the landlord. If the heir-at-law is not allowed to take possession there was as much a wrongful ejectment of the tenant as there would have been if the original tenant in his lifetime had been wrongfully ejected. In my opinion there is no conflict in the two classes of cases cited above. The suit was, in my opinion, rightly decided by the lower Appellate Court.

8. Mr. Sandal lastly desired that I might refer the case to a Bench of two Judges in view of the importance of the question involved. The point involved, however, is settled by authorities and does not admit, in my opinion, of two different views. In the circumstances I consider it unnecessary to refer the case to a Bench of two Judges.

9. The appeal fails and is hereby dismissed but without costs as the respondent is unrepresented.