

Desa and anr. Vs. Dhum Singh and anr.

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SooperKanoon Citation : sooperkanoon.com/481108

Court : Allahabad

Decided On : Nov-28-1934

Reported in : AIR1935All453

Appellant : Desa and anr.

Respondent : Dhum Singh and anr.

Judgement :

Bennet, J.

1. This is a first appeal from order by defendants 1 and 2. The plaintiffs brought a suit in the Court of the Munsif claiming damages from the defendants for having wrongfully cut down certain trees alleged to belong to the plaintiffs. These trees stood on a certain plot formerly the sir land of defendants 1 and 2. In 1927 there was an auction-sale of the zamindari share of defendants 1 and 2 and the plaintiffs purchased at auction-sale and received dakhnama on 29th August 1927. This was after Act 3 of 1926. came into force. The land although sir had a grove standing on it planted by defendant's 1 and 2. Subsequently they sold the trees to defendant 3, who cut them down. After the auction-sale rent was assessed by the Revenue Court on the plot as the exproprietary tenancy of defendants 1 and 2. The claim of the plaintiffs was that under the auction-sale the proprietary rights of defendants 1 and 2 in all their groves including the grove in suit passed to the plaintiffs and that the exproprietary tenancy of defendants 1 and 2 arose in the

land only. This view of the law has been taken by the lower appellate Court following a case reported in *Yakub Ali v. Tajamul Hussain Khan* 1932 All. 653. by a learned Single Judge of this Court. The defendants have Appealed alleging firstly that the suit was not cognizable by the Civil Court. It was argued that the plaintiffs could have sued in the Revenue Court under Section 85(3) of Act 3 of 1926. This sub-section entitles a, land-holder to sue a tenant for compensation for acts defined in Section 84 as detrimental to the land or inconsistent with the purposes for which it was let. I do not think that this section would be appropriate to the present plaint as the plaintiff claims that the proprietary right in the trees belonged to the plaintiffs. Accordingly I hold that the suit of the plaintiffs was correctly brought in the Civil Court. The second and third grounds of appeal argued that defendant's 1 and 2 are grove holders and that the defendants have a right in the trees standing on the land.

2. I have considerable difficulty in accepting the view of law laid down in the ruling quoted. That ruling does not appear to deal with the following difficulty: Section 14, Act 3 of 1926, lays down that on the transfer by foreclosure or sale in execution of a decree or by voluntary alienation otherwise than by gift or exchange between co-sharers a landlord shall become a tenant with a right of occupancy in his share and in the land which he has cultivated continuously for 10 years at the date of transfer. Sub-section (8) states that for the purposes of Sub-section (1) the use of land as grove land shall not be deemed cultivation. Accordingly therefore in the case of land not share the exproprietary rights would not arise if a grove stood on the land, but the section does not state that for share the existence of a grove will prevent the arising of exproprietary rights. Clearly therefore in the present case the exproprietary rights did arise and the Revenue Court confirmed the existence of those rights by assessing exproprietary rent on the holding. Now exproprietary rights confer a right of occupancy. A right of occupancy is not defined by the Act other than the definition in Section 16, but it is clear that a right of occupancy implies a right to occupy that is a right to cultivate the land or use it in a manner equivalent to cultivation, such as to use for grove or pasturage. This follows from the definition of land in Section 3, Sub-section (2) as land which is let or held for agricultural purposes or as grove land or for pasturage. The sale therefore should allow the creation of the right of the former owner to hold the land either for

agricultural purposes or as grove land or as pasturage at the favourable rates in Section 14, Sub-section (1) and with the security of tenure of an occupancy tenant. Now, if the view of the lower Court were correct that on such a sale, the former owner would have a right only to the land and the right in the trees would pass to the transferee, then the situation would arise that the exproprietary rights would merely be theoretical and would be of no practical value to the former Owner as long as the trees stood on the land. There is no provision in the Tenancy Act under which the former owner could insist on the transferee removing the trees and that it would be open to the transferee to keep the trees standing on the holding for many years until they cease to exist. The case therefore would be that where the former owner had used his sir land for the purpose of a grove, he would in fact on a sale obtain none of the benefits intended by Section 14, Tenancy Act, but where he used his sir land for cultivation, he would obtain all the benefits. I do not think that the section intended that such a difference should arise and if such a difference had been intended, I consider that Sub-section (8) would have made provision for such a difference. That sub-section as already noted does provide that for land other than sir land the existence of a grove prevents the accrual of exproprietary rights. The natural provision would be to have said that the existence of a grove on sir land would also prevent the accrual of exproprietary rights. As the Act does not say so I consider that the Act intends that the existence of a grove shall allow exproprietary rights to accrue in sir land without any let or hindrance and that the theory of law put forward by the lower Court is incorrect as that theory would in practice deprive the former owner of any benefit from his exproprietary rights. As regards the statement in the sale certificate that all the rights of the defendants in scattered trees or in groves passed to the auction-purchaser. I consider that this provision could not pass the rights in the grove in question because those rights are not capable of transfer owing to the provisions of Section 14, Agra Tenancy Act.

3. For the reasons which I have given, I allow this first appeal from order with costs throughout, and I set aside the decree of the Court below and restore the decree of the Court of first instance dismissing the suit of the plaintiffs. Leave is granted for Letters Patent appeal.

