

Chiswa Vs. Deo Narain

Chiswa Vs. Deo Narain

SooperKanoon Citation : sooperkanoon.com/484552

Court : Allahabad

Decided On : Apr-18-1923

Reported in : 73Ind.Cas.947

Judge : Daniels, J.

Appellant : Chiswa

Respondent : Deo Narain

Judgement :

Daniels, J.

1. This appeal and cross-objection arise out of a suit brought in the Muosif's Court for a declaration. The plaintiff-respondent. Deo Narain, filed with his plaint two lie to, list A and list B. As regards the plots in list A he alleged that he and certain pro forma defendants were the sole occupancy tenants of, and were in possession of, these plots, and he asked for a declaration that the answering defendant, Ghiswa, the appellant in this Court, had no concern with or right in those plots. As regards the plots in list B of which Ghiswa was admittedly in possession, he asked for a declaration that Ghiswa was his subtenant. The Trial Court dismissed the suit as not cognizable by the Civil Court. As regards the list B plots the learned District Judge agreed with the Trial Court. As regards the other plots he held that the suit was not barred, and on the merits that the plaintiff was, and the defendant was not, the occupancy tenant of these plots. He accordingly decreed the suit as

regards the list A plots. The defendant appeals in regard to the list A plots and the plaintiff files a cross-objection as regards the list B plots. The appellants learned Counsel has urged three objections:

First, he says, that the suit is in substance one for the division of a holding which is barred by Section 33 of the Tenancy Act. This objection is based solely on a loose use of the word 'holding' at one place in the District Judge's judgment. As a matter of fact, the lands are not one holding. On the contrary, as the plaint shows, they are distributed over nine different mahals held by different sets of proprietors.

2. The second plea is, that it was not open to the Court, as Counsel puts it, 'to split up the suit,' i.e., to hold that it was cognizable by the Civil Court as regards part of the subject-matter and not as regards the remainder. The reliefs claimed in regard to the list A and list B plots respectively being quite different there is no ground whatever why the Court should not hold that one part of the suit was cognizable by the Civil Court and not the other.

3. The third plea is also based on one sentence in the District Judge's judgment. The District Judge held that the whole of the documentary evidence was in favour of the plaintiff and that, except as regards the list B plots, the defendant Ghiswa had never been recorded as in possession in any capacity but he does not see why because the defendant 'has apparently been for a long time practically in the position of an occupancy tenant as regards about 1/5th or 1/6th of the original holding to assume that he is a sharer to the extent of 1/3rd in the whole.' The learned Counsel wishes me to interpret this as a finding that the appellant has been practically in the position of an occupancy tenant with regard to part of the list A plots. Reading the sentence with its context the meaning is clear. The reference is to the list B plots of which, the Judge finds the defendant to be in possession and which constitute between 1/5th and 1/6th of the area of the list A plots. There is, therefore, no force in any of the pleas urged in support of the appeal.

4. The cross-objection is to the effect that the suit is one between rival claimants to an occupancy tenancy which, under the rulings of this Court in *J agar Nath v. Ajudkya Singh* 17 Ind. Cas. 376 : 35 A. 14 : 10 A.L.J. 488 and *Kanhi Ram v. Durga*

Prasad 27 Ind. Cas. 913 : 37 A. 223 : 13 A.L. J. 278, is cognizable by a Civil Court. Neither of these suits is on all fours with the present case. The first was a suit for a declaration that the plaintiffs were occupancy tenants and that the defendants were trespassers. The second suit was a suit for a declaration that the plaintiff was the occupancy tenant of a holding from which the Revenue Court had ejected him as a sub-tenant, and if necessary, for possession. I may note that doubt has been thrown on this latter case by the subsequent decision in Baljit v. Mahipat 49 Ind. Cas. 118 : 17 A.L.J. 118 : 17 A.L.J. 60 A. 41 203 in which it was pointed out that no reference was made in the judgment to the provisions of Section 167 of the Tenancy Act. Putting aside rulings and looking at the actual law the suit as regards the list B plots is a suit exactly of the nature which is contemplated by Section 95 of the Tenancy Act, being specifically a suit for a declaration that the defendant is the sub-tenant of the plaintiff in respect of these plots. It has been argued that a restricted meaning should be given to the word, 'landholder' in the section. Landholder, however, has been defined in Clause (5) of Section 4 of the Act as being the person to whom rent is payable, and in reference to a sub-tenant the landholder is the occupancy tenant from whom he holds. The same view is taken by Mr. Agarwala on page 308 of his Commentary on the Tenancy Act, 7th Edition. The result is that the appeal and the cross-objection both fail and both are hereby dismissed with costs including in this Court-fees on the higher scale.