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Court : Allahabad

Decided On : Mar-09-1923

Reported in : AIR1923All453; 73Ind.Cas.981

Judge : Lindsay, J.

Appellant : Dharaman

Respondent : Sukhi and ors.

Judgement :

Lindsay, J.

1. In my opinion the judgment of the lower Appellate Court in this case is wrong and must be set aside.
2. The suit was brought by the plaintiffs to recover rent for the years 1325, and 1326 from the defendant on the ground that he had been cultivating 10 bighas 5 biswas land during that period at an annual rent of Rs. 88.
3. The plaintiffs are admittedly occupancy tenants and the claim was, therefore, brought against the defendant in his capacity as a sub-tenant.
4. The Assistant Collector dismissed the claim on the ground that no sub-letting had been proved.

5. The learned District Judge has found that, as a matter of fact, the defendant cultivated these lands during both the years in suit and that the rent had not been paid either wholly or in part.

6. So far as this part of the case is concerned, these findings are findings of fact and cannot be disputed.

7. A point of law, however, was raised before the learned District Judge to the effect that, inasmuch as the defendant had been shown to occupy the land for two successive years the sub-letting by the plaintiffs was in violation of the law as laid down in Section 25 of the Agra Tenancy Act. It was pleaded, therefore, that inasmuch as the sublease was void under the terms of that Section the plaintiffs could not get any relief from the Courts. The learned Judge, however, repelled, this argument referring to the provisions of Section 29 which, according to his interpretation, indicated that although a sub-lease, might be at variance with the law as laid down in Section 25, it was nevertheless enforceable.

8. I do not think the learned Judge has read Section 29 of the Act correctly. That Section does not say that where there has been a sub-letting in contravention of the terms of the Act, the sub-lease is valid and enforceable. All it says is that when there has been such a sub-letting and where the interest of the tenant becomes extinguished before the period of the sub-lease has expired the landlord has a right or option to treat the sub-lessee as his principal tenant and may enforce against him any of the covenants which he entered into with the tenant at the time the sub-lease was made.

9. The law in my opinion is perfectly clear. All agreements which are contrary to the law are void and unenforceable and no party to such an agreement can obtain any relief from the Courts. It follows, therefore, that here we have a case of a sub-lease made in contravention of the terms of the Act inasmuch as there was no registered instrument, and, that being so, the plaintiffs are not entitled to recover, the fact that the landlord has not chosen to enforce his option to eject the plaintiffs for having made a sub-lease in contravention of the terms of the Act cannot, as between the parties to the sub-lease itself, make that valid which is otherwise void under the law.

10. It has been argued before me that in any case the defendant ought to be made liable for the first year, i.e., 1325 Fasli, on the ground that a sub-lease for one year does not require registration. I am not disposed to accede to this argument. It is found clearly that the arrangement of the sub-tenancy was an arrangement made in defiance of the terms of Section 25 and I do not think the plaintiffs can fall back upon the plea that although the agreement for a sub-lease is in its entirety void nevertheless some portion of it is good so as to entitle the plaintiffs to claim one year's rent. The proper view is that the whole contract is void and the plaintiffs cannot recover. The result is that I allow this appeal, set aside the decree of the Court, below and restore the decree of the Court of first instance. The appellant is entitled to his costs both here and in the Court below, and in this Court costs will include fees on the higher scale.

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