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Court : Allahabad

Decided On : Jun-27-1922

Reported in : 68Ind.Cas.985

Judge : Ryves, J.

Appellant : nderpal Singh

Respondent : Bafati ors.

Judgement :

Ryves, J.

The facts giving rise to this application in civil revision are as follows :

1. The plaintiff, the Raja of Mahson, is the Zemindar of the holding in dispute. The defendant is its occupancy tenant and holds it on batai rent, that is to say, the rent payable by him is half the crop raised each year payable in kind. It is alleged that in the year 13-7 Fasl, the defendant purposely did not sow the land, so that there was no crop.
2. The plaintiff sued the defendant for an years of his rent in that year, in the Revenue Court. The pleadings are not before me.
3. From the judgment of the Assistant Collector, it appears that that Court dismissed the suit, on the ground that (he patxari proved that no crop had been

rained on the land. On appeal, the Collector contented himself with dismissing the appeal in a judgment of a few lines, without any discussion. That litigation ended there. I presume it could have been taken further, but as the pleadings are not before me, I cannot say. But anyhow I think it unnecessary to pursue that question further. The Revenue Court did not refuse to hear and decide the suit but decided it rightly or wrongly (it is immaterial which) apparently on its merits on the evidence before it.

4. In 1328 Fasli the defendant again did not sow the land hence this suit, which was brought to recover Rs. 30 as damages in the Court of Small Causes at Basti,

5. The learned Judge says Rents in Cash or kind are recoverable only through the Revenue Court. It is true, liability for rent in case of intentional non production is not specially provided for in the Tenancy Act; but there does not seem to be any difference in principle in the case of non-production of crops in any particular year, and the costs of removal of crops after production but before appraisement, for the purpose of estimating rent provided for in Section 104, Clause 4 of the Act.' He, accordingly, held, that the suit was exclusively triable by the Revenue Court, and ordered the plaint to be returned for presentation to the proper Court.

6. The plaintiff comes here in revision. It is strenuously argued, on his behalf, that Section 102 I A, 217 : 1 Ind. Dec.(n.s.) 127. of the Act, read with Section 104, (having especial regard to the wording of Clause (4) enables a Revenue Court to give relief where the rent is payable in kind, only when a crop has in fact been grown. If a tenant deliberately refuses to sow the land, he commits a breach of his implied covenant to sow and cultivate the land with due diligence, and 'that, therefore, as rent can be ever ascertained there being no crop, much less can it be recovered on the basis of half of the harvested crop, his only remedy is to sue for damages for breach of contract.

7. In order, *prime facie*, to decide a question of jurisdiction, it is necessary to examine the plaint. Before proceeding further, therefore, I will give a summary of the plaint.

9. Paragraph 1 describes the plaintiff as the landlord, and the defendant as his occupancy tenant of the land in dispute. Paragraph 2 states, that the land was let to the defendant on the agreement (and according to a prevalent oatom) that the tenant should cultivate the land and sow crops, and that the Zemindar should receive half of the produce by way of rent. Paragraph 3.-'The defendant is obstinate and headstrong, and in order to cause loss to the plaintiff did not sow the land during 132 \$ Fasli, but left it fallow, with the result that the plaintiff suffered a loss of Rs. 80, which he is entitled to recover from the defendant.' Paragraph 4--- As the lands are occupancy holdings of the defendant., the plaintiff cannot get them cultivated by other tenants, Paragraph 5.--The plaintiff often demanded 'damages or rent,' (harja wa nuksan ya lagan) from the defendant, but he refused. Paragraph 6.--The plaintiff has suffered loss from the unlawful action of the defendant, and as long as the defendant does not sow any crops in the suit lands, so long it is impossible for the plaintiff to realize the batai rent (rent in kind) through the Revenue Courts. The suit for arrears of rent was dismissed by the Rent Court and the plaintiff has no remedy except to bring a suit for damages in this Court.

10. It seems to me that, from a perusal of the plaint itself, the suit was within the cognizance of the Revenue Courts. Admittedly the relationship of landlord and tenant subsists, and the rent has not been paid, and the plaintiff prays to recover Rs 30, 'damages or rent'. I think, for reasons recorded below, this suit falls within a suit contemplated by Section 102 of the Tenancy Act, having regard to the explanatory words of the Fourth Schedule, Serial No.2.

11. Section 167 of the Tenancy Act, I think, puts the matter beyond doubt. It provides that 'all suits...of the nature specified in the Fourth Schedule shall be heard and determined by the Revenue Courts; and, except in the way of appeal, as hereinafter provided, no Court other than a Revenue Court shall take cognizance of any dispute or matter in respect of which any such suit...might be brought.' Turning to the Fourth Schedule, I find included in it Serial No. 2, i. e., a suit under Section 102 of the Act 'for arrears of rent, or where rent is paid in kind, for money equivalent of such rent.' It seems to me, that this suit comes within Section 102, as explained in the schedule. These words 'or where rent is paid in kind, for money equivalent of such rent,' was first introduced into the Tenancy

Legislation of these Provinces, by Section 93 (a) of Act XII of 1881, apparently to give effect to the ruling of the Full Bench of this Court, in *Tajudd in v. Boot Par shad* (1). Apart, however, from the broad question whether such a suit lies in a Civil Court, I think, the present suit is excluded from the cognizance of the Small Cause Court, in which it was filed by Art. 8 of the Second Schedule to Act XI of 1887. The case of *Lalji Panday.v. Berham-deo Panday* 13 Ind. Cas. 29 : 16 C. W. N. 89. is exactly in point. There *Mookerjee and Carnduff, JJ.*, discuss the law at length. I reject the application with costs. w. c. A. Application rejected.

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