

Jamna Vs. Mangya

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Court : Rajasthan

Decided On : Sep-12-1952

Reported in : AIR1953Raj86

Judge : Sharma and; Dave, JJ.

Acts : [Constitution of India](#) - Article 227; Rajasthan (Protection and Tenants) Ordinance, 1949 - Sections 7

Appeal No. : Writ Appln. 9 of 1952

Appellant : Jamna

Respondent : Mangya

Advocate for Def. : Party in person

Advocate for Pet/Ap. : R.A. Gupta, Adv.

Disposition : Application dismissed

Judgement :

Sharma, J.

1. This is an application under Article 227 of the [Constitution of India](#) by Jamna Kumhar of Damodarpura against whom the opposite party Mangya filed an application under Section 7, Rajasthan (Protection of Tenants) Ordinance, 1949,

for reinstatement. His allegation was that he was in occupation of a certain agricultural property on 1-4-1948, but was dispossessed from it on 6-7-1950. The applicant resisted the application, but the learned Sub-Divisional Officer, Sawai Jaipur, made an order of reinstatement of the opposite party. A revision was filed against this order under Section 10(1) of the said Ordinance, but it was dismissed. The petitioner has filed this application under Article 227 of the [Constitution of India](#), and has prayed that in the exercise of the powers of superintendence conferred by Article 227, the order of the Board of Revenue be vacated and the application of the opposite party for reinstatement be rejected.

2. We have heard Mr. Ram Avtar Gupta on behalf of the petitioner. The opposite party is present in person, but is unrepresented. The chief argument of Mr. Ram Avtar is that under Section 7, Rajasthan (Protection of Tenants) Ordinance, an order of reinstatement can be made only if an application is made within 3 months from the date of dispossession. In the present case, according to the opposite party's own showing, dispossession took place on 1st Asarh Budi 7, which corresponded to 7th June, 1950 and the application for reinstatement was made on 3-10-1950 which was obviously time-barred. He has cited a ruling in the case of-- 'Maqbul Ahmad v. Onkar Pratap Narain Singh', AIR 1935 P C 85, in which it was held that

'Section 3, Limitation Act is peremptory and the duty of the Court is to notice the Act and give effect to it, even though it is not referred to in the pleadings.'

Mr. Gupta argues that although no objection regarding limitation was taken by the petitioner before the Sub-Divisional Officer, the application of the opposite party ought to have been dismissed as time-barred. He has also referred to the case of -- 'Hanuman Prasad v. Ram Autar Baldeo', AIR 1952 Vindh P 10 to show that under Article 227(1) of the Constitution the High Court has got the powers of general superintendence over the Board of Revenue, and can interfere with its orders under certain circumstances. He has further referred to the case of -- 'Israil Khan v. The State', AIR 1951 Assam 106 in which it was held that

'even if the judgment or order of the Court or tribunal functioning within the territorial limits of the jurisdiction of the High Court is made final by statute and

even if the Court itself is not subject to the appellate jurisdiction of the High Court, its judgments or orders may be interfered with in the exercise of the powers of superintendence of the High Court.'

3. So far as the question whether this Court can exercise its general power of superintendence under Article 227 over the Rajasthan Board of Revenue is concerned, we agree with the learned counsel for the petitioner that this Court has such power, and under appropriate circumstances an order of the Board of Revenue can be interfered with by this Court, if special circumstances are made out for such interference. The question, however, is whether in the present case the learned counsel for the petitioner has been able to make out a case for the exercise of our general power of superintendence under Article 227. The complaint of the petitioner is that although the application under Section 7, Rajasthan (Protection of Tenants) Ordinance, 1949, was obviously time-barred, yet the revenue Courts gave relief to the opposite party, who was applicant before the Sub-Divisional Officer. On a perusal of the application we do not find that the application was obviously time-barred. The date of dispossession is given to be 2nd Sarh Budi 7, corresponding to 6th July, 1950. On its face, therefore, the application could not be said to be time-barred. The petitioner did not take any objection before the revenue Court that dispossession took place more than three months before the date of the application, and the application was consequently time-barred. It was a question of fact whether dispossession took place on the date alleged by the opposite party in his application before the revenue Court or on some other date. The petitioner brought, therefore, to have pleaded as a fact that dispossession did not take place on 6-7-1950, as alleged by Mangya but on some other date.

Under Section 7, Tenants Protection Ordinance, and that the S. D. O. or an officer of equal status has to do on receipt of an application for reinstatement is to send a notice to the opposite party and on being satisfied after such summary enquiry, as he may consider necessary that the applicant was ejected or dispossessed, as mentioned in Clause (b) of Section 7(1), to order that the applicant be reinstated, and that any other person in possession of the holding or part of the holding be ejected. In the present case, the Sub-Divisional Officer made summary enquiry,

and he came to the conclusion that a case was made out for the re-instatement of Mangya. The judgment of the S. D. O. shows that even at the time of hearing, it was not pressed that there was any evidence on which it could be held that the application was made beyond time. The point was raised for the first time before the Board of Revenue, and on a reading of the evidence produced in the case coupled with the fact that the petitioner did not raise any contention about limitation in his reply although in the application of the opposite party the date of dispossession was specifically mentioned to be 6-7-1950, it held that there was no cause for interference with the order of the Sub-Divisional Officer. The Board of Revenue was the final judge of facts and law in the present case, and it came to the conclusion that dispossession took place within three months from the date of application and the application was consequently within time. The statement of Mangya on which reliance has been placed on behalf of the petitioner has also been considered as a whole by the Board of Revenue. Even if that statement is looked into by this Court, we do not find that it could be said positively that a case of the application being barred by limitation was made out. Under the circumstances, we do not think that we shall be justified in interfering with the order of the revenue Courts. Even in the case of --'Israil Khan v. The State', AIR 1951 Assam 106, relied on by the learned counsel for the petitioner, it has been observed by Ram Labhaya J. that as the finding in that case by the subordinate Courts was on a question of fact, and rested on oral testimony and some circumstantial evidence also, and without a careful and minute examination of the evidence on both sides, it was not possible to say whether a different conclusion was possible to arrive at, there was no justification to interfere with the finding of the subordinate Courts. The learned Judge further says that

'The jurisdiction under Article 227 is extraordinary in character. Its exercise is limited to rare cases where apparent miscarriage of justice caused or induced by illegalities or irregularities cannot be prevented otherwise orders without jurisdiction may also be interfered with.'

In the present case we do not find that any apparent miscarriage of justice has been caused or induced by illegalities or irregularities. Learned counsel for the petitioner himself does not challenge the jurisdiction of the revenue Courts in the

matter. No case has, therefore, been made out for quashing the orders of the revenue courts.

4. The application is dismissed. As the opposite party is not represented, we make no orders as to Costs.

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