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Court : Himachal Pradesh

Decided On : Dec-28-1949

Reported in : AIR1950HP33

Judge : Bannerji, C.J.

Acts : Tenancy Law; ;[Punjab Tenancy Act, 1887](#) - Sections 77 and 100

Appeal No. : Civil Reference No. 63 of 1949

Appellant : Mt. Maina

Respondent : Dhundu

Advocate for Def. : L.N. Sethi, Adv.

Advocate for Pet/Ap. : Ved Vyas, Adv.

Disposition : Reference dismissed

Judgement :

ORDER

Bannerji, J.

1. This is a reference made by the District Judge of Caamba under Section 100, Punjab Tenancy ACT, recommending that the decree dated 26th July 1949 of the Subordinate Judge, from which an appeal was taken to him, be registered as a

decree of a revenue Court inasmuch as the suit was cognizable by a revenue Court.

2. The material facts, as appear from the pleadings and also from the judgment, are as follows: The plaintiff, Mt. Mama, widow of Laddakhi, commenced this suit for possession of land, measuring four acres one kanal and one marla recorded in Khata No. 43 and seven marlas of land, in Khata Nautor at page 26, in village, Melah, pargana Lihl. The defendant took this land from plaintiffs' husband and cultivated it, it is alleged by the plaintiff, OH half batai. In para. 2 of the plaint, the plaintiff, alleged that she had warned the defendant not to prepare land for Rabi crop for 2005 and give up possession of the land, which the defendant refused.

3. The defence was that as an occupancy tenant of the land, the defendant was not liable to ejectment. Such, in brief, are the pleadings.

4. On 22nd poh. 2004, the plaint was presented to the Court of Shri Ganesh Dutt, then District Judge of Chamba, who transferred it to the file of Shri Prem Raj.

5. After the issues were joined, Shri Prem Raj was succeeded by Shri Lachhman Das.

6. It may be mentioned that the suit was registered as Civil Case No. 286 instituted on 7th October 1948.

7. The three issues relating to this case are as follows:

'(1) Is the defendant in possession of the land as occupancy tenant and has he acquired the right of an occupancy tenant.

(2) Was defendant living with Ladakhi as he was related to him and so, no occupancy right have accrued to the defendant.

(3) Redress.'

8. Upon issue No. 1, the learned Judge relied upon a document, Ex-D. A., which, in his opinion, was 'thoroughly proved,'. Upon this document, he held :

'the defendant is the occupancy tenant of half of the land.' He decided issue No. 2 against the plaintiff and finally gave 'a decree for possession of half of the land out of Khata No. 43 and Khata Nawtor page 26, in favour of the plaintiff against the defendant, with half costs.'

9. An appeal was taken to the District Judge. The learned District Judge observed that

'from the pleadings of the parties it would appear that the suit is primarily one for ejectment of a tenant and falls under Section 77 group II, Punjab Tenancy Act (XVI [16] of 1887), which has been made applicable in Himachal Pradesh. The civil Court had no jurisdiction, therefore, to try the suit and the plaint ought to have been returned by the Sub-Judge for presentation to a Revenue Court having jurisdiction in the matter.'

10. I agree with the learned District Judge that when it became necessary on the plea of the defendant that he was an occupancy tenant, to adjudicate as to status of the defendant as occupancy tenant, the jurisdiction of the civil Court was ousted and the suit became one cognizable by the revenue Court only, See Nawab v. Arura, A. I. R. (13) 1926 Lah. 418 ; (94 I. C. 514). Further, it was held by a Division Bench of the Lahore High Court in Murid Hussain v. Fazal Illahi, A. I. R. (9) 1922 Lah. 173 : (69 I. C. 645), that when after having entertained the suit, the civil Court reached a point in the trial at which it held that the plaintiff sued as landlord, the proviso to Section 77, Punjab Tenancy Act, would take effect and make it incumbent on the Court to return the plaint for presentation to the revenue Court.

11. Similarly, if the Court finds that the defendant is a tenant-at-will of the plaintiff, it must follow the procedure laid down in proviso (1) to Section 77, Punjab Tenancy Act.

12. However, I do not agree with the learned District Judge that the parties have not been prejudiced by this mistake. He has recommended that 'in order to validate those proceedings-now, it is necessary to take action under Section 100: of the Act.'

13. The provisions of Section 100, Punjab Tenancy Act, are not applicable to the present case. The suit involves points, which can be heard and determined by revenue Court only. A definite procedure is laid down for the ejectment of the tenants under Sections 39, 40, 41, 42 and 43, Punjab Tenancy Act. If the defendant is an occupancy tenant, he will be liable to be ejected on the grounds prescribed under Section 39. If the defendant is proved to have no right of occupancy but holding for a fixed term, the conditions for ejectment are found in Section 40. Lastly, if the plaintiff's allegation is true that the defendant is a tenant from year to year, then she has to prove that she followed the procedure as laid down in Section 41.

14. The issues between the parties will be different and have to be determined according to the evidence which will be adduced by the parties.

15. The issues, which the learned Subordinate Judge formulated, are not such issues as would enable the plaintiff to prove her case or, the defendant to refute it.

16. In the circumstances, in my judgment, the suit in the trial Court cannot be held to be determined in good faith and that the parties have not been prejudiced by the mistake as to jurisdiction. Section 100, Punjab Tenancy Act has, therefore, no application to the facts of the present case. If a decree is made in favour of a plaintiff without observing the provisions regarding ejectment of a tenant, it must be held that the tenant was prejudiced by the mistake as to jurisdiction and it would be inequitable in such circumstances to direct the registration of the decree of a civil Court as a decree of the revenue Court,

17. For the foregoing reason, I decline to accept the recommendation of the District Judge. I dismiss the reference but in view of all the circumstances of the case, I leave the parties to bear their own coats throughout.