

Devi Ram and anr. Vs. Murli and ors.

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Court : Himachal Pradesh

Decided On : Jan-15-1953

Reported in : AIR1953HP89

Judge : Chowdhry, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 115; ;Tenancy Law;
; [Punjab Tenancy Act, 1887](#) - Sections 14 and 77(3)

Appeal No. : Civil Revn. No. 70 of 1952

Appellant : Devi Ram and anr.

Respondent : Murli and ors.

Advocate for Def. : Kirti Ram, Adv.

Advocate for Pet/Ap. : D.R. Chaudhary, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Chowdhry, J.C.

1. This is a defendants' application in revision, and it arises in the following circumstances.

2. The plaintiff-respondent filed a suit against the defendants-petitioners for recovery of possession of an agricultural holding two bighas in area and Rs. 424/- as mesne profits, being value of produce of the land from Sayar 1950 to Nyah 1952, on the allegations that the land belonged to the plaintiff but was in wrongful possession of the defendants, that the plaintiff accordingly dispossessed them and himself obtained possession of the land, but that the defendants had again usurped possession thereon since Sayar of 1950. The defendants traversed the plaintiff allegations and set their own title, and they also pleaded that as the relief of recovery of mesne profits could only be granted by a revenue Court the entire suit was liable to be returned for presentation to that Court.

3. The trial Court framed the preliminary issue as to whether the suit was not triable by a civil Court, and it recorded the finding that the whole suit was within the jurisdiction of the civil Court. The defendants have come up in revision to this Court against that finding.

4. The learned counsel for the plaintiff-respondent took the preliminary objection that as the mere recording of a finding on a question of jurisdiction did not amount to a case decided, the revision was not competent. In support of his argument he cited--'Prakash Chand. v. Mahendra Kumar', AIR 1948 All 288 (A), where it was held that no revision lay from an order under Order 14, Rule 5(2), Civil P. C., striking out issues as being not material to the decision of the case since such an order was an interlocutory order not amounting to a case decided. He also relied upon--'Ghani v. Mustafa Khan', AIR 1948 Oudh 305 (B). The latter ruling is totally irrelevant, for it related to whether a remand order by an appellate Court was open to appeal or revision. I am quite aware of the conflict of judicial opinion among the various High Courts as to whether an interlocutory order amounted to a case decided within the purview of Section 115, Civil P. C. I however prefer the Full Bench decision of the Lahore High Court in--'Bibi Gurdevi v. Md. Bakhsh', AIR 1943 Lah 65 (FB) (C), in which it was held that the word 'case' in Section 115 was of a very wide import and meant any state of facts juridically considered, and that therefore an interlocutory order deciding any substantial question in controversy between the parties so as to affect their rights, as distinguished from a purely formal or incidental order, amounts to a case decided within the meaning of

Section 115, even though such an order is passed in the course of the trial of a suit. I do so because if a Court which has no jurisdiction at all to try a case proceeds to try it on an erroneous decision on an issue as to jurisdiction, a great deal of time and money will be wasted if the error is patent and yet cannot be rectified till the final decision of the suit. I overrule the preliminary objection and hold that the revision is competent.

5. It is conceded that if this were a suit merely for recovery of possession of land from the defendants as trespassers it would be triable by a civil Court. The contention on behalf of the defendants-petitioners however is that the addition of the relief of recovery of mesne profits renders the whole suit as triable by a revenue Court because that is a relief for recovery of a sum recoverable Under Section 14, Punjab Tenancy Act, and, as such, falling under Section 77 (3) (n) of that Act, which is excepted under sub-section (3) of the latter section from cognizance of any other but the revenue Courts. The point for determination therefore is whether the relief for recovery of mesne profits in the present case does amount to a relief for recovery of a sum recoverable under Section 14 of the Act. Section 14 is in the following terms:

'Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use or occupation of that land at the rate of rent payable in the preceding agricultural year, or, if rent was not payable in the year, at such rate as the Court may determine to be fair and equitable.'

6. In support of the contention that the mesne profits claimed by the plaintiff-respondent in the present suit were of the nature of payment covered by Section 14 the learned counsel for the defendants-petitioners relied upon the following rulings: --'Bholanath v. Dana', 19 Pun Re 1891 (D);--'Rattan v. Battan Singh', AIR 1918 Lah 185 (E) and--'Ganesha Mal v. Ibrahim', AIR 1919 Lah 237 (2) (F). In the first mentioned case, the allegation in the plaint was that the defendants had taken forcible possession of and cultivated the land for the harvest of Rabi 1946 and appropriated the produce; and that, if the plaintiff had been permitted to cultivate the land, he would have derived a profit of Rs. 200/-. He accordingly sued for recovery of that amount as damages. In these circumstances, it was held by

Plowden, J., as follows: 'These persons then were, according to the allegations of the plaintiff, 'in possession of land occupied without the consent .of the plaintiff', who is undoubtedly on his allegations 'the landlord' within the meaning of Section 14 of the Punjab Tenancy Act. The definition of landlord in clause (6) of Section 4 is made subject to the context, by the opening words of Section 4. The term 'landlord' in Section 14 is not used in relation to 'tenant', the person there spoken of not being a tenant, but it clearly indicates the person who would be landlord if the land had been occupied with his consent, instead of being occupied without it.

Section 14 declares the liability of the person in possession of land thus occupied. Section 77 provides that 'the following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted', and includes among such suits in clause (n) 'suits by a landlord for sums recoverable under Section 14'.

It follows that this suit was not cognizable by the Civil Court.'

7. The next case cited above was also for recovery of mesne profits of land from a person wrongfully in possession of the same, and, on a reference under Section 99 of the Tenancy Act, it was held by Scott-Smith, J., that the suit was triable by a revenue Court under Section 77(3) (n) of the Act. The learned Judge observed as follows:

'The question is whether the present suit is one for sums recoverable under Section 14 of the Punjab Tenancy Act. In--'Ghuna Mal v. Jhanda Singh', 82 Pun Re 1894 (1) (G) where the plaintiffs-mortgagees sued persons in possession without their consent for mesne profits of the land, it was held that the plaintiffs, who were entitled to possession under their mortgage, were 'the landlord' as regards the defendants who were in possession of the land occupied by them; that Section 14 and Section 77(3)(n) of the [Punjab Tenancy Act, 1887](#), applied to the case. The plaintiffs in that case had not actually entered into possession under their mortgage, but it was held that they were 'the landlord' as regards the defendants, inasmuch as they were the persons immediately entitled to the use and occupation of the land of which the defendants had deprived them. The same

was the view adopted in--'Thakurdas v. Kanhaya', 1 Pun. Re. 1893 (Rev.) (H). In that case a mortgagee sued to obtain possession of the mortgaged land under a default clause in that behalf in the mortgage deed, and obtained a decree. A second mortgagee was in possession at the time of the suit, The first mortgagee (plaintiff in the first suit) then sued the second mortgagee for payment for the use and occupation of the land during, the time that the first suit was pending. It was held that in these circumstances the first mortgagee must be regarded as landlord of the land within the meaning of Section 14, [Punjab Tenancy Act, 1887](#), for the period in question, and the second mortgagee as a person in occupation without the landlord's consent. In that case also the plaintiff had not obtained possession of the mortgaged land during the period for which he brought the suit for mesne profits.'

8. The relevant portion in the third ruling is extremely jejune, and, as no details of the sum of Rs. 7/8/- claimed as damages are given, it cannot be said with definiteness whether that amount was claimed as mesne profits or rent. If that sum was claimed as rent, the case clearly fell within the purview of Section 14, and therefore there could be no quarrel with the finding, that the plaintiff could not recover that amount in the civil Court. This ruling is therefore not helpful. But I would like at this stage to point out the difference between rent and mesne profits. Rent, as defined in Section 4(3) of the Punjab Tenancy Act, means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him. The term mesne profits is defined in Section 2(12), Civil P. C. as meaning profits which the person in wrongful possession of property actually received or might with ordinary diligence have received therefrom together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.

Now, there is no doubt that wrongful possession is the foundation for a claim for mesne profits, and that under Section 14, Punjab Tenancy Act, the person liable to make payment to the landlord is also a person in wrongful possession since he is a person in possession of land occupied without the consent of the landlord; but there all that is common between this section and the above definition of mesne profits ends. Under Section 14 what the person in wrongful possession of land is

liable to pay to the landlord is rent at a certain rate, which is not the same thing as profits which he actually received or might with ordinary diligence have received from the land of which he is in wrongful possession. Ordinarily, the rent of the land would be less than its mesne profits for the period of the trespasser's wrongful possession. There is no reason why the landlord should be made to limit his claim against a trespasser to the recovery of only rent as distinguished from mesne profits, although, of course, he may in a certain case content himself with a claim for rent only. He may, for instance, do so in the case of a fixed term tenant holding over without his consent beyond the term of tenancy if he choose to continue to treat him as his tenant. It is manifest therefore that Section 14, Punjab Tenancy Act, covers only cases where the landlord chooses to claim rent against a person in possession of land without his consent, but not cases where his claim against the person in wrongful possession is for recovery of mesne profits. It follows therefore that if the landlord sues the person in wrongful possession of the land for recovery of mesne profits, as the plaintiff has done in the present suit, his claim would not be for recovery of a sum recoverable under Section 14, Punjab Tenancy Act, and consequently the suit in which such a claim is made would not be one excepted from the cognizance of a civil Court under Section 77 (3) (n) of the Act.

9. In the two Punjab rulings of 1891 and 1918 cited by the learned counsel for the defendants-petitioners, stress was laid on merely two ingredients of Section 14 : that the person claiming the payment was a landlord, and the person against whom the claim, was made was one in possession of land without the consent of the landlord. No attention seems to have been paid to the third ingredient of the section, namely, that the payment in question is rent and not mesne profits. The result was that in spite of the fact that the claims in both the rulings related to payments which were clearly mesne profits, it was held that the suits fell within the purview of Section 14 of the Tenancy Act and were therefore not cognizable by a civil Court. With great respect therefore I am unable to subscribe to the view expressed in these rulings. On the contrary, for reasons recorded above, I hold that the claim in the present suit is not for a payment covered by Section 14 of the Punjab Tenancy Act, and that therefore the findings of the trial Court that the suit was wholly triable by a civil Court was quite correct.

10. The revision is dismissed with costs, the stay order dated 25-10-1952 is hereby discharged, and the trial Court is directed to proceed with the disposal of the rest of the case according to law.

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