

## **Jag Narain And Ors. vs Rai Asht Bhuja Prasad And Ors. on 20 April, 1951**

**Equivalent citations: AIR1951ALL715A**

### **JUDGMENT**

Kidwai, J.

1. The history of the property involved in this appeal will help in the proper understanding of the points raised.

2. Rai Udit Narain Singh, who owned village Karemwa. in the district of Rai Bareilly, died on 14-12-1889, & was succeeded by his widow, Thakurain Dhiraj Kuar. The lady granted permanent leases to a large number of persons, including one in favour of applts. 1 & 6, the predecessors of applts. 2 to 5. She died on 30-11-1934, & on 8-11-1935, Rai Samarjit Singh claiming as the next reversioner sued the lessees, including the aforementioned applts., for possession of the leased property on the ground that the widow had no authority to grant perpetual leases -- vide Ex. P. 3, the plaint. This suit was compromised -- vide Ex. P. 6. Rai Samarjit Singh was held to be the proprietor & the defts. were to remain in possession as tenants at a rent to be determined by a competent Court -- vide Ex. P. 1 decree & Ex. P. 4 judgment.

3. In accordance with this decision possession over the property was delivered to the D. H., who on 7-12-1937, instituted in the Court of Sub-Divisional Officer, Salon, district Rae Bareilly, a suit Under Section 32 B read with Section 108 (3a) & Under Section 108 (2), Oudh Rent Act, for assessment of rent & for arrears of rent for the year 1344F.

4. The suit was dismissed because the Ct. held that the rent had already been assessed & so Section 32 B was not applicable. It did not consider the claim for arrears of rent at all --vide Ex. D. 4. There was an appeal in the Court of the Dist. J. who allowed it & held that a suit was maintainable for determination of rent -- vide Ex. D. 5. Since, however, the other points Involved had not been decided, he remanded the suit to the Sub-Divisional Officer for retrial.

5. On 25-8-1939, the learned Sub-Divisional Officer fixed Rs. 161/12/-, subject to a deduction of 1/8 as remission as long as remissions continued, & granted a decree for Rs. 70/4/5 arrears of rent, being the rent for Rabi 1344 F since the realisation of arrears for Kharif 1344 F had been stayed -- vide Ex. P. 2. The defts. appealed to the Comr. but their appeal was dismissed -- vide Ex. P 9.

6. After this a revn. of settlement took place & the Revising Officer issued a slip stating that it was proposed to raise the rent of the holding from Rs. 33/10 to Rs. 70/12 -- vide Ex. D. 1. It appears that no objection was taken to this proposal & rent was fixed at Rs. 70/12 & this was entered in the

revenue papers because the Asst. Colr, held that the order of the Revising Officer superseded all other orders -- vide Ex. D. 2 & Ex. D. 3.

7. On 14-7-1941, the resps. instituted the Butt out of which this appeal arises for arrears of rent for the year 1345 to 1348 F. They claimed rent at the rate of Rs. 141/8/6 for the first three years but, remissions having come to an end in 1347 F, they claimed Rs. 161/12 as rent for 1348 F. The total claimed, including Interest, was Rs. 641/9/3.

8. The defts. pleaded that Rs. 70/12 had been fixed by the revising officer as reasonable rent & only that rent could be decreed & that the order of the Asst. Colr, fixing rent at Rs. 161/12 was without jurisdiction since the suit had originally been dismissed & the rent was only fixed on remand by the Dist. J. who had, Under the Oudh Rent Act, no power to hear the appeal. Other pleas were also taken which are no longer material.

9. The learned Asst. Colr. held that the judgment of the Sub-Divisional Officer in the earlier suit fixing rent, was with jurisdiction & that consequently it operated as 'res judicata'. He also found that the fixation of rent by the revising officer was not final. He decreed the suit for the entire amount claimed. The Civil Judge of Rae Bareilly upheld the findings of the trial Ct. & dismissed the appeal. The defts. then filed this second appeal which was originally laid before our learned brother, Chandiramani J. He was pressed with a decision of a D. B. of the Chief Ct. of Oudh in 'Jageshar Prasad v. Lal Narsingh Pratap', (1939 OWN 823), to hold that the appeal from the order of the Sub-Divisional Officer dismissing the suit for fixation of rent & for arrears did lie in the Court of the Dist. J. He doubted the correctness of the decision & reld. the appeal to a Bench for disposal. It has accordingly been laid before us.

10. There are only two points involved in this appeal, namely : (1) Did the Dist. J. have jurisdiction to hear the appeal from the order of the Sub-Divisional Officer dismissing the suit for fixation of rent & for arrears? & (2) Does the order of the revising officer fix the rent in supersession of other orders?

11. On the first point the learned Advocate has two decisions in his favour, namely, 'Mohd. v. Nasira', (1939 OWN 749), & 'Jageshar Prasad v. Lal Narsingh Pratap', (1939 OWN 823). Both these decisions are by the same Bench & hold that if the suit is of such a nature that the appeal does not lie exclusively to the Dist. J. Under Section 119, Oudh Rent Act, the appeal lies to the Comr. Under Section 116, Oudh Rent Act. In the present case it was further contended that the Asst. Colr. had in fact only decided the case in so far as it related to fixation of rent & consequently the Comr. had exclusive jurisdiction to hear the appeal.

12. With great respect to the learned Judges who decided the two Oudh cases mentioned above I cannot accept the law therein laid down as correct & I prefer the view expressed by a learned single Judge in 'Kalka v. Ram Suchit', 2 OWN 499, & by two D. Bs. of the same Court in 'Ram Bahadur v. Dharam Raj', (5 OWN 1126), & 'Sarfaraz Singh v. Dy. Comr., Gonda', (7 OWN 191). In the last case the learned Judges refused to follow the single Judge decision & differentiated the two earlier bad decisions on the ground that they were cases arising Under Section 127, Oudh Rent Act & not Under

Section 32 B & folld. their own decision disputed (sic) in the same volume of the O. W. N. I propose first of all to examine the law.

13. An appeal is a creature of Statute & appeals must lie to those Courts to which the law provides that they shall lie. Sections 116, 119, 119B & 120, Oudh Rent Act, provide for appeals from various orders passed by Courts exercising jurisdiction under that Act. Section 116, which provides for appeals to superior revenue Courts is made expressly subject to the provisions of Section 119. Section 119 provides:

"Subject to the provisions of Civil P. C., 1908. as applied by this Act, an appeal shall lie from an original or appellate decree or order of a Colr. or of an Asst. Colr. of the first class in a suit of a description mentioned in Clauses (2), (5), (9), Sub-clause (a) or (b), (11), (13a), (15), (16), (17) or (18) of Section 108, as follows namely: (a) to the Dist. J., if the value of the suit does not exceed five thousand rupees; (b) to the Chief Court, if the value of the suit exceeds five thousand rupees." Thus under the provisions of this section read with Section 116, it was the Dist. J. (or the Chief Court) alone that had jurisdiction to hear appeals in a suit of the description mentioned in Clause (2) of Section 108. The fact that to such a suit is joined a claim for assessment of rent Under Section 32 B, as permitted by Sub-section 3 of that section, is immaterial & does not alter the nature of the suit.

14. It is true that the Sub-Divisional Officer did not go into the question of arrears. In this he committed an error. The suit was one not only for fixation of rent but also for arrears of rent. Even on the conclusion that rent had already been fixed by an earlier decision, a decree should have been granted for arrears at that rate. This was not done but the whole suit was dismissed. Thus, although the Court did not consciously decide the question of arrears, as a fact, it did dismiss the suit for arrears also & the appeal was against such a decree of dismissal.

15. Moreover it is not the nature of the appeal that determines jurisdiction but the nature of the suit. Section 119, Oudh Rent Act, expressly provides for appeals in 'a suit of a description mentioned' in, among others, Clause (2) of Section 108 of the Act. With all respect to the learned Judge who decided 'Mohd. Umar v. Nasira', (1939 OWN 749), it is immaterial, therefore, what is the nature of the plea raised in appeal. Thus in so far, at least, as the suit was of the nature mentioned in Section 108 (2), Oudh Rent Act, the appeal lay to the Dist. J. & not to the superior revenue Ct.

16. The question would then be whether two appeals should be filed from the same decree to the superior revenue Ct. from that part of the decree that fixes rent & to the Dist. J. from that part of the decree which grants arrears? There is no warrant in law for the filing of several appeals in different Cts. from portions of one decree. In 'Mohd. Umar v. Nasira', 1939 OWN 749 & 'Jageshar Prasad v. Lal Narsing Pratap', 1939 OWN 823, only one appeal was held to lie & the appls' learned advocate frankly conceded that it was not possible for him to contend that there could be two appeals. This being so & the Revenue Ct. not having jurisdiction to hear an appeal in a suit of the nature mentioned in Clause (2) of Section 108, Oudh Rent Act, it was the Dist. Judge alone that could hear the appeal. The decision in 'Kalka v. Ram Suchit', (2 OWN 499), is a carefully consd. decision. At p.

501 of the report the learned Judge says :

"When a pltf. brings a suit for arrears of rent & joins a relief with regard to the determination of rent, in my opinion the suit nevertheless remains a suit for arrears of rent brought Under Section 108, Clause (2). The relief with regard to determination of rent is merely ancillary to his getting a decree & if the suit for arrears of rent is one in which an appeal would lie on the civil side I fail to see how the forum of appeal would be changed merely because in order to get the relief claimed the pltf. has added in his suit a relief with regard to determination of rent also. For example if in this case the applts. before me had taken up their appeal to the Court of the Comr. & the Comr. had determined the rent he could not, it is obvious, have proceeded further in the case because it would not be within his jurisdiction to pass a decree for arrears of rent. The appeal in his Ct. would have become merely an infructuous proceeding. I am therefore of opinion that the decision of the learned Dist. J. is wrong & that he Was fully competent to entertain & decide the appeal brought in his Ct. by the pltf's. applts." I respectfully agree with the reasoning which is not really met in either of the two judgments which differed from it.

17. I now come to a consideration of the two judgments upon which the applts' learned advocate relied. In both those cases the learned Judges seem to consider that the superior Revenue Courts had been constituted Cts. of residuary jurisdiction in appeals. That is true but they were, at the same time, deprived of jurisdiction to hear appeals covered by Section 119. As Gokaran Nath Misra J. pointed out in 'Kalka v. Ram Suchit', (2 OWN 499), if the Comr. on appeal modified the decree as to the fixation of rent, he could not proceed to give effect to this modification by interfering with the decree for arrears & the appeal to him would be infructuous.

18. Further it appears that in 'Mohd. Umar v. Nasira', (1939 OWN 749), the attention of the learned Judges was not drawn to 'Kalka v. Ram Suchif, (2 OWN 499); 'Ram Bahadur Singh v. Dharam Raj Singh', (5 OWN 1126) & 'Sarfaraz Singh v. Dy. Comr., Gonda', (7 OWN 191). At least there is no mention of these decisions in that case & it was only in the case of 'Jageshwar Prasad v. Lal Narsingh Pratap', (1939 OWN 823), that their attention was drawn to the conflict which had arisen. In the circumstances they preferred to follow their own earlier decision.

19. It may also be pointed out that the ground upon which the learned Judges in 'Jageshwar Prasad v. Lal Narsingh Pratap', (1939 OWN 823), distinguished 'Ram Bahadur Singh v. Dharam Raj Singh', (5 OWN 1126) & 'Sarfaraz Singh v. Dy. Comr., Gonda', (7 OWN 191), is not tenable. According to them the position in suits Under Section 127, Oudh Rent Act, which was the nature of suits in those two cases, was different to that in suits Under Section 32 B because in respect of the latter class of suits, there are two suits while Under Section 127, Oudh Rent Act there is only one suit. With all respect, it cannot be held that if a suit for fixation of rent is joined with a suit for arrears there still remain two suits. If the argument was logically followed, there would then be two appeals, one of which would lie in the civil Ct. & the other in the revenue Ct. but this is not what the learned Judges decided. Once the suit for fixation of rent is joined with a suit for arrears it becomes one suit.

20. Further the position in suits for fixation of rent under Section 32 B, is no different from the position in suits for fixation of rent Under Section 127 if the landlord chooses to treat the person in possession as a tenant. Sub-section (3) of Section 32 B places both classes of suits on the same footing. It says :

"A suit for determination of rent under Sub-section (1) or Under Section 127 may be joined with a suit for arrears of rent under Clause (2) of Section 108." If, in spite of this provision a suit for fixation of rent Under Section 127 joined to a suit for arrears is only one suit, it is difficult to understand how a suit for fixation of rent Under Section 32 B (1) combined with a suit for arrears of rent can still be treated as two separate suits. With all respect, therefore, I am unable to follow the decisions in 'Mohd. Umar v. Nasira', (1939 OWN 749), & Jageshwar Parsad v. Lal Narsingh Pratap', (1939 OWN 823).

21. The appeal from the order of the Sub-Divisional Officer refusing to fix rent & dismissing the suit even for arrears of rent did lie to the Dist. J. & his order allowing the appeal & remanding the suit for trial of the remaining questions involved was not without jurisdiction. The fixation of the rent after the remand was thus validly done & is binding unless it was subsequently modified by a competent authority.

22. The next contention on behalf of the applts. is that the rent was modified by a competent authority the revising officer, acting Under Section 87, U. P. Land Revenue Act. Both the lower Courts have repelled this contention. The trial Court held that in the previous suit the Dist. J. had held that the order of the settlement Officer was not conclusive. The trial Ct. was in error in this respect. The Dist. J. was not referring to the order of the revising officer, which had not till then been passed, but to the order of the settlement officer fixing the rent at Rs. 33/10/- in accordance with the terms of the perpetual lease granted by Dhiraj Kuar. He gave no decision on the question of the validity of the Revising Officer's order.

23. The lower appellate Ct. held that this was not a case into which the Revising Officer could go & consequently he held that the order of the Revising Officer could be ignored.

24. No order passed inter partes by a duly constituted authority can be ignored unless it is passed without jurisdiction. If it is wrong it can be corrected only by the methods recognised by law -- appeal, revn. or review. It is not for the Court in a subsequent suit to go into the correctness of an order passed inter partes by an authority having jurisdiction. It has, therefore, to be seen whether the Settlement Officer had jurisdiction to fix the rent in a case such as the one in which he assessed rent.

25. Section 87, U. P. Land Revenue Act, as it stood amended in 1940, conferred jurisdiction upon Revising Officers not only to enhance & abate rent, but also to fix & determine rents. Further he could do so (not?) only on the application of a landlord or a tenant but also 'suo motu' & he had jurisdiction to fix rents of occupancy as well as hereditary tenants. Thus, whether the defts. were hereditary or occupancy tenants, the Revising Officer had power under the Statute to determine the

rent payable by them & his order is not without jurisdiction & cannot be ignored.

26. It may be that it was not in accordance with the rules framed by the Board of Revenue for the guidance of Revising Officers --though it is by no means certain -- that would not make the order one without jurisdiction. It would be an incorrect order but, as has been pointed out so often, a Ct. has jurisdiction to decide wrongly as well as rightly, & the proper remedy was to get the order corrected by appeal. Thus the order of the Revising Officer would bind the parties in supersession of all previous orders & agreements.

27. In the present case, however, this is of no advantage to the applts. because it is not shown that the order of the Revising Officer relates to the holding involved in this appeal.

28. From the facts which have been stated above it appears that Thakurain Dhiraj Kuer had granted a perpetual lease of and of various kinds -- cultivatory as well as grove & parti -- on one consolidated rent, Rs. 33/10/-. By a compromise between the lessees & the successor of Dhiraj Kuer this land was split up into various tenures, the grove land being separated from the tenancy land. The Asst. Colr. held that groves could not be assessed to rent because the compromise conferred the rights of grove-holders in them. Thus the assessment of rent was in respect only of the tenancy land & it is this land for which rent is claimed in the suit out of which this appeal arises.

29. The order of the Revising Officer, however purports to assess rent on the entire area of land held under the perpetual lease as one whole. By the subsequent compromise this tenure had come to an end. The Revising Officer was thus determining rent of a tenure that did not exist. His order cannot operate upon the holding that had already come into existence before the date of his order but of which he did not even purport to determine the rent, even though the holding is only a part of the earlier tenure. Thus the order of the Revising Officer does not have the effect of superseding the rent fixed by the Sub-Divisional Officer in the earlier case.

30. The decision of the lower appellate Ct. must stand & this appeal fails& is dismissed with costs.