

Nanku vs Pathar Din on 18 August, 1950

Equivalent citations: AIR1952ALL305, AIR 1952 ALLAHABAD 305

JUDGMENT

Kidwai, J.

1. This appeal arises out of a suit instituted by Pathar Din respondent for possession of some tenancy land against the appellant. Pachai, grandfather of the respondent and father of Nanku, held an agricultural tenancy before the U.P. Tenancy Act was passed. He died long ago and after his death his son Mangal was granted a patta by the Nazul Department, the superior landlord, for the period 1335 to 1340 Fasli. On the expiry of this period, a fresh patta was executed in the name of Mangal for 1343 to 1352 Fasli. While this fresh patta was in force the U. P. Tenancy Act became law.
2. On the 26th January, Pathar Din instituted the suit out of which this appeal arises alleging that on the death of his father he succeeded as hereditary tenant of the plots in suit but that the defendant had taken unlawful possession of them in June 1935. He accordingly sued in the Court of the Munsif for possession of the plots.
3. The defendant alleged that he was a co-tenant of the plots in suit. His plea of tenancy seems to have been based upon the fact that formerly Pachai was a tenant. He further pleaded that since the plaintiff did not sue for recovery of possession within three years of the passing of the U. P. Tenancy Act, he had acquired hereditary rights under Section 180 of the Act.
4. The question as to whether the defendant was a co-tenant of the plots in suit was referred by the learned Munsif to the Revenue Officer for a finding. The Revenue Officer found that the defendant was not a co-tenant, but he proceeded to hold that he was a sajhi kasht. On the return of this finding the Munsif held that the defendant was the sajhi kasht and could not be ejected from the land. The suit was accordingly dismissed."
5. The plaintiff appealed and the learned Civil Judge of Gonda has held that it was not open to either of the Courts below to come to the conclusion that the defendant was a sajhi kasht, since that was not the case set up by the defendant in his pleadings. A plea of co-tenancy means that the person claiming to be a co-tenant has been let into possession of the land by the landlord himself. A plea that a person is a sajhi kasht means that he has been allowed to obtain possession by the tenant. As the learned Civil Judge points out, these are two inconsistent pleas, and the plea of sajhi kasht not having been taken, it was not open either to the Munsif or to the Revenue Officer to come to the conclusion that the defendant was a sajhi kasht.

6. The learned Civil Judge has remarked that there was no evidence to establish that the defendant has acquired the right of a co-tenant. The pattas stood in the name of Mangal the father of the plaintiff. Even if Nanku was a member of the joint family with Mangal, this would not mean that he had become a tenant unless it was shown that the zamindar had agreed to the grant of a tenancy not to Mangal but to the joint family of which Mangal was the head. No such evidence has been produced in the case. The finding of both the Courts below that the defendant is not a co-tenant must therefore be upheld.

7. It was contended that the defendant has been in possession for more than three years after the passing of the U. P. Tenancy Act and that therefore, by operation of Section 180, U. P. Tenancy Act, he has become a hereditary tenant. This suit was instituted in the civil Court. There is no plea that it did not lie in the civil Court. In accordance with the settled view of the Avadh Chief Court, suits between tenants and persons who had no right to possession did not lie, before the law was amended, in the Revenue Court but had to be brought in the civil Court. The reason for this decision was that the learned Judges, on a consideration of the wording of Section 180, came to the conclusion that that section was not applicable to such suits. It is only if the section is not applicable that the suit lies in the civil Court. When, therefore, a civil Court is called upon to decide the question of tenancy, it cannot take the limitation prescribed by Section 180 as the limitation required to establish hereditary tenancy. The very fact that the suit has been brought in the civil Court and no plea of jurisdiction has been taken indicates that Section 180, U. P. Tenancy ACT is not applicable. That being so, the defendant could not be deemed to have acquired hereditary rights by the lapse of three years and he has not even claimed that he has been in possession for a period of 12 years, which is the period required by Limitation Act for the establishment of any rights of immovable property by adverse possession.

8. This appeal, therefore, fails and is dismissed with costs. The stay order dated 18-2-1947 is hereby vacated.