

## Mahipal Singh vs Bhagwan Din on 20 November, 1951

**Equivalent citations: AIR1953ALL216, AIR 1953 ALLAHABAD 216**

### JUDGMENT

Kidwai, J.

1. Bhagwan Din, plaintiff, instituted the suit out of which this appeal- arises in the Court of the Munsif, South Unnao, claiming that he was the sub-tenant of three plots of land in village Hasnapur, in the district of Unnao, which the defendant Mahipal Singh held as tenant-in-chief from the 'taluqdar'. He claimed that his sub-tenancy was a permanent one under an agreement between the father of the defendant and the plaintiff and that a rent of Rs. 34/- had been reserved which he was paying. He further pleaded that the defendant had taken action under Section 175, U. P. Tenancy Act, and that this act cast a cloud on his title as a permanent sub-tenant, which had compelled him to institute the suit out of which this appeal arises for a declaration that the defendant is bound by the agreement entered into between the plaintiff and the defendant's father and for an injunction directing the defendant not to take proceedings under Section 175, U. P. Tenancy Act.

2. The defence was a denial of the agreement and a plea that the agreement was contrary to the provisions of the law and as such void and ineffectual. It was also pleaded that the Court had no jurisdiction to try the suit.

3. The learned Munsif framed three issues, the first of which was to try the question whether there was contract as alleged, the second was as to jurisdiction and the third as to relief.

4. The learned Munsif found that he had jurisdiction to try the case; that the contract was established and that the contract was not illegal. He accordingly granted the declaration and issued the injunction, though in his judgment he ordered that the suit of the plaintiff for "specific performance" be decreed.

5. The defendant appealed but the learned Civil Judge of Unnao dismissed the appeal upholding the findings of the learned Munsif. The defendant has now come up in second appeal and the case has been referred to a Bench for disposal in view of the importance of the points raised.

6. The pleadings do not show when the father of the defendant died. If he died before the U. P. Tenancy Act was passed, the defendant is not in possession as successor but independently in possession as a tenant under the landlord since the Oudh Rent Act did not recognise a hereditary right of succession beyond the period of five years. In that case any agreement entered into between the plaintiff and the father of the defendant would not be binding upon the defendant.

7. If, on the other hand, the father of the defendant died after the U. P. Tenancy Act had come into force, he became a hereditary tenant under the provisions of that Act and the defendant succeeded to his holding under the provisions of Section 35 of the Act. In such a case he would be the successor of his father but that does not mean that any agreement entered into by his father would be binding upon him.

8. Section 43 deals with the binding nature of sub-leases granted by a tenant and it provides, "When a tenant has sub-let, the successor-ininterest of such tenant shall be bound by the terms of the sub-lease, in so far as they are consistent with the provisions of this Act."

Both the lower Courts have failed to consider this section altogether although they have referred to Section 39 to 44 of the U. P. Tenancy Act in dealing with the case. They have acted upon the distinction drawn in Section 44 between void and voidable transfers and they have come to the conclusion that since the sub-lease of the nature of the present one was only voidable, it bound the successors-in-interest of the man who granted it.

9. Section 43 does not deal either with void or voidable or illegal transfers or sub-leases. By reason of that section it is only those leases which are consistent with the provisions of the Act that can be held binding upon the successor. Section 39 deals with the power of a tenant to sub-let and it directs that a tenant, other than a tenant of 'sir' or a sub-tenant, may sub-let the whole or any portion of his holding under such restrictions as are imposed by this Act. Thereafter follows Section 40 which directs that no hereditary tenant shall sub-let the whole or any portion of his holding for a term exceeding five years, or within three years of any portion of such holding being held by a sub-tenant. These are the provisions of the Tenancy Act with regard to sub-letting and if the terms of the sub-lease granted by a tenant are not consistent with these provisions, those terms will not bind the successor by reason of Section 43, even though such a lease may only be voidable.

10. Thus having regard to the provisions of Section 43, U. P. Tenancy Act, the defendant is not bound by the agreement between Bhagwan Din and the defendant's father, which has been found as a fact to have been established. The plaintiff's learned Advocate contended that in any case the defendant had himself accepted the sub-lease. No such plea was taken in the plaint nor is there anything on the record to show that Mahipal Singh accepted rent from Bhagwan Din on the basis of any such agreement. All that the record shows is that Mahipal Singh did accept rent from Bhagwan Din, but from this it cannot be presumed that he had any knowledge of any alleged oral agreement between his father and Bhagwan Din entered into about 20 years before the suit was filed. Thus this plea too is not established.

11. In these circumstances this appeal must be allowed and we allow it and set aside the decrees of both the Courts below. The plaintiff's suit shall stand dismissed with costs in all the Courts.