

Kashi Kurmi And Ors. vs Chandi Kurmi And Ors. on 22 January, 1953

Equivalent citations: AIR1953ALL723, AIR 1953 ALLAHABAD 723

JUDGMENT

Malik, C.J.

1. This is a defendants' appeal under Section 12 (2) of the Oudh Courts Act read with the U. P. High Courts (Amalgamation) Order, 1948.

2. The plaintiff and defendant No. 8 were the sub-tenants of a pahi tenant, Hasan Raza. Hasan Raza died in the year 1931. He left a daughter who was impleaded as defendant No. 6 and a son who was impleaded as defendant No. 5 to the suit. After the death of Hasan Raza, his heirs were entitled to remain in possession for the unexpired period of ten years which was the period for which the tenancy was deemed to exist under Section 36 of the Oudh Rent Act. The lower appellate Court has held that the 10 years expired in 1342 Fasli which corresponds to 1934-35. The heirs of Hasan Raza, therefore, were entitled to remain in possession of the property till 1934-35. In the year 1942, the landlord, who is defendant No. 7 to this action, filed proceedings under Sections 87 and 83 of the U. P. Tenancy Act (No. 17 of 1939) intimating that he wished to treat the holding as abandoned. On 20-11-1942 the objections filed by defendant No. 5, the son, were dismissed and the landlord entered into possession and on the 21st of February, 1944, he let out the plots to defendants 1 to 4. The plaintiff then filed the suit out of which this appeal has arisen against defendants 1 to 4, who were the main contesting defendants, and also impleaded defendants Nos. 5 and 6, son and daughter of Hasan Raza, and defendant No. 7, who was the landlord, and also impleaded as pro forma defendant, defendant No. 8 who it was said was also a sub-tenant along with the plaintiff.

3. The suit was contested by the defendants who pleaded that abandonment proceedings having been taken against the tenant the subtenants could not claim any right to remain in possession. Other objections were also taken which it is not necessary for us here to discuss.

4. The plaintiff challenged the proceedings under Sections 87 and 88 of the U. P. Tenancy Act on the ground that defendants 5 and 6, i.e., the son and the daughter, both were the heirs of Hasan Raza and became the tenants of the plots in suit and the abandonment proceedings having been taken only against the son and not against the daughter, the rights of the daughter still survived and it could not be said that the tenant's rights had come to an end.

5. The learned Munsif framed a number of issues which arose out of the proceedings and remitted issues Nos. 2 to 4 for decision by the revenue Court. The revenue Court held that the defendant No. 6, i.e., the daughter, had never been in possession and had never been recognised as a tenant and,

therefore, she had no interest and the proceedings taken against defendant No. 5, were, therefore, valid. As a result of the findings recorded by the revenue Court and by the learned Munsif the plaintiff's suit was dismissed on 19-7-1945.

6. There was an appeal filed against that decision which was allowed by the learned Civil Judge on 8-4-1946. The learned Judge came to the conclusion that the proceedings under Sections 37 and 88, U. P. Tenancy Act, against defendant No. 5 were valid and the tenant's rights came to an end on 20-11-1942, but the learned Judge relied on the provisions of Section 295. U. P. Tenancy Act, and held that, as the plaintiff was in possession as a sub-tenant in the year 1940 when the U. P. Tenancy Act came into force, under Section 295 of that Act he became entitled to remain in possession for a period of five years from 1-1-1940, i.e. upto 31-12-1944. The learned Civil Judge failed to notice that the period of five years had expired before the date of the decree passed by him and the plaintiff, therefore, could not claim the right to be put back into possession on that date.

7. Against the decision of the lower appellate Court there was an appeal filed in this Court. The appeal came up before a learned single Judge on 28-10-1950, and the learned Judge dismissed the appeal relying on Section 295-A which had been added by the U. P. Tenancy (Amendment) Act (No. 10 of 1947).

8. The learned single Judge did not disagree with the findings recorded by the lower Courts that by reason of the proceedings under Sections 87 and 88, U. P. Tenancy Act, the tenancy had terminated on 20-11-1942. The learned Judge, however, relied on the decree dated 8-4-1946, passed by the lower appellate Court, which was under appeal "before him, and held that, as on that date the lower Court had held that the plaintiff was entitled to get back possession of the property, the plaintiff was a sub-tenant on the 14th of June, 1947, when the new Section 295-A came into force, under the U. P. Tenancy (Amendment) Act of 1947, and became entitled to the benefit given under that section. Section 295-A is as follows:

"Notwithstanding any contract to the contrary or anything contained in this Act or any other law for the time being in force every person who on the date of the commencement of the United Provinces Tenancy (Amendment) Act, 1947, is a sub-tenant shall, subject to the provisions of the proviso to Sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947, be entitled to retain possession of his holding for a period of five years from that date, and for this period nothing in Sub-section (2) of Section 44 or Section 171 shall render the landholder of such sub-tenant liable to ejectment under the provisions of Section 171;

Provided that nothing in this section shall authorise a sub-tenant of a person who belongs to one of the classes mentioned in Section 41 to retain possession of his holding after the disability of such person has ceased."

The question, therefore, arises whether on the date when the Amendment Act of 1947 came into force the plaintiff could still be called a sub-tenant of the plots in suit. The section gives a person who is a sub-tenant on that date a right to retain possession for a further period of five years. The

learned single Judge has not discussed the question whether the plaintiff was or was not a sub-tenant on 14-6-1947, when the Amendment Act came in force. He has, however, assumed, that, as the lower Court had decreed the appeal on 8-4-1946, which decree was the subject-matter of the appeal before him, the plaintiff was entitled to the benefit of the new section.

9. Examining the facts again with reference to this issue, it emerges from the findings of the lower Courts that the plaintiff was let into possession of these plots as a sub-tenant by Hasan Raza on some date prior to the year 1939. He was in possession as a sub-tenant on the date when the U. P. Tenancy Act of 1939 came into force. Under section 295 of that Act he became (entitled to remain in possession for a period of five years. The period of five years pexpired on the 31st of December 1944, and his right to remain in possession came to an end. He could not, therefore, plead that on 14th June, 1947, he was still a sub-tenant of the plots in suit. It may be further noted that Section 295 nowhere mentions that the sub-tenant shall continue to be a sub-tenant for a period of five years i.e. his status of a subtenant shall be preserved for five years. It only gives him a right to retain possession for a period of five years. The Board of Revenue has taken the view in a recent case that though under Section 295 a sub-tenant has been given the right to remain in possession for Jive years the section does not provide that the sub-tenancy as such shall continue for a further period of five years. It is not necessary for us to give a final decision on the point as it has not been mooted at the Bar, but even if it be assumed that the plaintiff had continued to be a sub-tenant under the provisions of Section 295, that period also expired, in 1945, long before the Amendment Act of 1947 came into force, and there is no evidence nor could there be any, that after 1942 when the principal tenant was ejected there was any further contract of sub-letting express or implied in plaintiff's favour. In any view of the case, therefore, Section 295-A, U. P. Tenancy Act could not apply and the plaintiff's suit should have been dismissed.

10. The result, therefore, is that we set aside the decrees passed by the learned single Judge and the lower appellate Court and restore that of the Court of first instance with costs in all the Courts.

11. As the suit has been dismissed, the stay order is discharged.