

Parihar Singh And Ors. vs Sita Ram Singh And Ors. on 10 December, 1951

Equivalent citations: AIR1952ALL940, AIR 1952 ALLAHABAD 940

ORDER

Bina Basni Prasad, J.

1. This is a plaintiffs' petition in revision against an order passed by the learned Assistant Collector of Gyanpur in the district of Banaras staying a suit for ejectment which the plaintiffs brought against the defendants on 23-9-1949. From the relief contained in the plaint it appears that the suit purported to be under Section 34/58, Agra Tenancy Act, as applied to the erstwhile Banaras State.

2. The plaintiffs' case was that they were the tenants-in-chief of the plots in dispute, that they made a usufructuary mortgage of them to one Chunni Lal, that they had got the mortgage redeemed, that the defendants were sublet those plots by the mortgagee and that after the redemption, they became the sub-tenants of the plaintiffs, but they were denying the plaintiffs' rights. In para 3 of the plaint it was alleged that the plaintiffs did not want the defendants to continue as sub-tenants any further. Hence they prayed for their ejectment.

3. On 30-9-1950, learned Assistant Collector passed an order to the following effect:

"In para. 2 of the plaint it is clearly pleaded that the defendants are the shikmi tenants holding from year to year. Consequently on the fact which has been alleged, the suit must be stayed. It is therefore, ordered that the suit be stayed until further orders."

The plaintiffs come up in revision against this order and contend that according to law the suit cannot be stayed.

4. The first objection taken on behalf of the opposite party is that no case has been decided within the meaning of Section 115, Civil P. C. and so the revision is not maintainable. This point has no force in view of the decision in Dy. Commr. of Sultanpur v. Salik Ram, 1950 ALL. W. R. 692. Chandiramani J. held that where an order of stay under Section 10, Civil P. C. is passed, it can be said that there was a case decided within the meaning of Section 115, Civil P. C. Apart from this authority, it is Section 240, Banaras State Tenancy Act, 1949, which is relevant in this case. That section allows revision whenever a suit or an application has been decided. In the present case the defendant made an application for the stay of the suit and it was decided by the lower Court. The

question is whether under the law in force in this territory, the suit could be stayed.

5. When the erstwhile Banaras State merged with the Indian Union, the Banaras State (Administration) Order, 1949, was issued by the Government. Section 6 of that order provides :

"All laws, rules, regulations, byelaws, notifications and orders made under any law in force in Banaras State or any part thereof, immediately before the appointed day, shall continue to be so in force until repealed, amended or modified by a competent authority.

Provided that any reference by whatever form of words to the Ruler or Government of Banaras State in any such rule, regulation, byelaw, notification or order shall be construed as a reference to the Provincial Government."

6. Then the U. P. Merged States (Application of Laws) Act, 1950 (U. P. Act VII [7] of 1950) was passed. Sub-section (2) of Section 3 of that Act provides:

"In addition to and without prejudice to the provisions of Sub-section (1) or of any other law relating to extension or application of laws to the merged States, all enactments in force in, or applicable to, in the United Provinces on 30-11-1949, as relate to matters with respect to which the State Legislature has powers to make laws for Uttar Pradesh and as have not already been extended to the merged States are hereby extended to the merged States subject to-

(i) any amendment to which they were generally subject in or in their application to the United Provinces on the date aforesaid, and

(ii) the subsequent provisions of this Act."

7. According to Sub-section (3) of Section 3 the enactments were to come in force with effect from such date, as the States Government might, by notification in the official gazette, appoint in that behalf. It has not been shown to me that the U. P. Tenancy Act, 1939, has been extended to the erstwhile Banaras State.

8. On the other hand, from the schedule attached to the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, as amended by U. P. Act No. VII [7] of 1950 and Ordinance No. III [3] of 1951, it would appear that in the territory of the erstwhile Banaras State, the Banaras State Tenancy Act (Act No. III [3] of 1949) is still in force, as it is referred to in the schedule. Now from Section 10, U. P. Act VII [7] of 1950, it appears that so far as the proceedings under the Banaras State Tenancy Act, 1949, are concerned, only those under Sections 97, 99, 154 and 159 of that Act have been stayed subject to the proviso that cases under Section 159 have been stayed only where the plaintiffs are proprietors. But where in a suit under Section 159, the plaintiffs are tenants then they are not to be stayed.

9. On behalf of the plaintiffs-applicants it is contended that inasmuch as the suit falls under Section 159 of the Banaras State Tenancy Act, 1949, and as the suit is by a tenant-in-chief against the sub-tenant, it is not covered by Section 10 of the said Act. On the other hand, learned counsel for the defendants-opposite-parties contends that the suit falls under Section 154 of that Act. The question is whether the suit falls under Section 154 or Section 159. Section 159 provides for suit for ejectment of persons occupying land, without title and Section 154 provides for ejectment of non-occupancy tenants.

From the plaint it will be seen that the plaintiffs admit that the status of the defendants is that of a tenant. In para. 3 they say that they do not want the defendants to continue as subtenants any longer. They admit the status of the defendants as a sub-tenant. It is true that towards the end of para 2 of the plaint the plaintiffs allege that the defendants are occupying the land without their consent and they style the suit as one under Section 34/58 of Act II [2] of 1901, but this is hardly of any value in the face of the clear admission by the plaintiffs themselves that the defendants are their sub-tenants. According to law also the position of a sub-tenant admitted by a mortgagee continues as such even after the redemption.

In the Collector of Basti v. Sarnam Gharak, 8 ALL. L. J. 802 it was held that the tenancy created by usufructuary mortgagees is binding on the mortgagors after the redemption of the mortgage in so far that the relationship of the landlord and tenant continues, and that if the mortgagor desires to bring the tenancy to a close he must do so by a regular suit under the Tenancy Act. When the defendant came into possession of this land under a lease from the mortgagee they cannot be treated as trespassers. A trespasser is one who is in possession without the consent of the landlord.

10. The next question is whether the suit falls under Section 154 which relates to non-occupancy tenants. The expression "non-occupancy tenant" is defined as follows in Section 20 of the Act :

"All tenants other than permanent tenure holder, fixed-rate tenants, ex-proprietary tenants, occupancy tenants and hereditary tenants, are non occupancy tenants."

From Sub-section (22) of Section 3 it will be seen that the word 'tenant' includes a sub-tenant. Hence in the expression "non-occupancy tenant" sub-tenants also fall. The present suit for ejectment by a tenant-in-chief against a sub-tenant, therefore, comes within the purview of Section 154, Banaras State Tenancy Act, 1949. As such the order of stay passed by the lower Court was correct.

11. The present suit appears to have been brought at a time when the Banaras State Tenancy Act had not come into force. Section 256 of that Act provides:

"A suit under any of the provisions of the Agra Tenancy Act II [2] of 1901, as applied to the Banaras State which is pending at the commencement of that Act or a decree under any of the provisions of the said Act, which has not been satisfied in full at such commencement, shall be decided or executed, as the case may be, in accordance with the corresponding provision of this Act and if there is no such corresponding

provision, the proceedings relating to such suit or decree shall be quashed."

The suit purported to be by a tenant-in-chief against a sub-tenant. Section 154 is the corresponding provision in the Banaras State Tenancy Act, 1949. The stay order was rightly passed.

12. The revision has no force and it is hereby dismissed with costs.