Ganga Din vs Gokul Prasad on 5 January, 1950

Equivalent citations: AIR1950ALL407, AIR 1950 ALLAHABAD 407

JUDGMENT

Agarwala, J.

1. This is an application in revision against an order of the Munsif North, Faizabad, decreeing the plaintiff-respondent's suit, which was brought under Section 9, Specific Relief Act.

2. The plaintiff-respondent alleged in the plaint that he was in possession of the plots mentioned at the foot of the plaint and had prepared them for cultivation when the defendant forcibly dispossessed him. In para. 6 of the plaint he mentioned that the land was tenancy land and that, therefore, he was paying court-fed on that basis. He did not mention that he was the tenant of the land or that he had any other title to it. The defence was that the defendant was the tenant of the plots in suit and that the civil Court bad no "jurisdiction to entertain the suit as it was cognisable by the revenue Court alone under the provisions of Section 242 read with Section 180 or Section 183, U. P. Tenancy Act. The defendant further denied that he had dispossessed the plaintiff as alleged by him. The learned Munsif held on the facts that the plaintiff bad been dispossessed by the defendant within six months of the suit and that the suit as framed was cognisable by the civil Court under Section 9, Specific Relief Act. He, therefore, decreed the Suit. The defendant has come up in revision to this Court against that order.

3. Learned counsel appearing for the applicant had urged that in substance the suit was a suit by a tenant for possession of agricultural land and as such was cognisable by the revenue Court and the jurisdiction of the civil Court was barred under Section 242 read with Section 180 and 183 U. P. Tenancy Act. Learned counsel has further referred to the case decided by one of us reported in Beni Madho Singh v. Prag, 1949 A. L. J. 24: (A. I. R. (36) 1949 ALL. 510), in support of his contention. He has also invited our attention to Another single Judge decision reported in Lal Bahadur Singh v. Surajpal Singh, 1946 A. L. J. 201 : (A. I. R. (33) 1948 ALL. 486) in which, according to him, a correct view of the law was not taken.

4. A question of jurisdiction whether a suit is entertainable by the Court in which it is instituted or not has to be decided upon the allegations made in the plaint. Looking at the plaint in the present case, as already stated, the plaintiff did not allege any title to the land in dispute. He merely alleged his previous possession over the same and also alleged his dispossession by the defendant within six months. It is true that he did mention that the land in dispute was tenancy land but that was merely for the purposes of payment of court-fee and not to show that the plaintiff was himself the tenant of the land, It may be that be was in adverse possession of the land, the real tenant being somebody else. He had framed the suit under Section 9, Specific Relief Act which is in these terms :

> "If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be sat up in such suit.
>
> Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

It is clear that in a suit under Section 9 the only allegations that are relevant are those of a person's previous possession and his dispossession by the defendant. The title of the parties is not relevant and indeed it is specifically provided that the section does not bar any person from recovering possession of the property on the basis of his title. The result, therefore, of this provision in Section 9 is that even if the defendant has a better title than the plaintiff, he cannot resist the plaintiff's suit for recovery of possession if the plaintiff proves the allegations made by him.

5. The present suit was clearly one under Section 9, Specifics Relief Act. But that does not answer the applicant's objection. A suit may fall under Section 9, Specific Relief Act and yet if its cognizance by the civil Court is barred by any provision of law, it cannot be tried by the civil Court, This brings us to Section 242, U. P. Tenancy Act.

6. Section 242, U. P. Tenancy Act provides:

> "Subject to the provisions of Section 286 all suits and applications of the nature specified in Schedule 4 shall be heard and determined by a revenue Court, and no Court other than a revenue Court, shall, except by way of appeal or revision as provided in this Act take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application."

7. Schedule 4 includes "two entries" as follows:

Serial No.	Section of Act	Description of suit.
18	180	For the ejectment of a person occupying land without title and for damages.
19	183	For recovery of possession of a holding or for compensation or both.

> Now if regard be had to the mere "description" of the suit, the present suit may fall under either of these two entries. But it is manifest that the terms of Sections 180 and 183 must also be considered before it can be pronounced that a particular suit falls under any of these two entries.

8. Section 180, as it stood before the recent amendment which does not apply to the present case, provided as follows :

> "(1) A person taking or retaining possession of a plot or plots of land otherwise than in accordance with the provisions of the law for the time being in force and without the consent of the person entitled to admit him as tenant shall be liable to ejectment under this section on the suit of the person so entitled,. . . . .
>
> (2) If no suit is brought under this section or a decree obtained under this section is not executed the person in possession shall on the expiry of the period of limitation prescribed for such suit or for the execution of such decree, as the case may be, become a heriditary tenant of such plot or plots."

It may be conceded that the land in dispute is land within the meaning of that word under the U. P. Tenancy Act. But, as will be seen from its language, the section contemplates a suit by a person "entitled to admit the defendant as a tenant" and speaks of the suit "of the person so entitled." It is, therefore, clear that a suit nudes Section 180 is instituted by a person who has some title to the laud and who has the power to admit the defendant as a tenant. This conclusion is reinforced when we consider Sub-section (2). When a suit is not brought under the section, the man in possession becomes, on the expiry of the period of limitation, a hereditary tenant of the land. In order that a person should become a hereditary tenant of the land, the omission to sue must be the omission of the person who has title to the land either as a landlord or as a tenant-in-chief or in some other capacity. It is obvious, therefore, that in a suit under Section 180 the plaintiff has to allege that he has a title to the laud.

9. Under Section 183 the words are (1) Any tenant ejected from or prevented from obtaining possession of his holding or any part thereof, other wise than in accordance with the provisions of the law for the time being in force by (a) his landholder or any person claiming as landholder to have a right to eject him, or (b) any person admitted to or allowed to retain possession of the holding by such land holder or person, whether as tenant or otherwise, may sue the person, so ejecting him or keeping him out of possession (i) for possession of the holding . . . ."

Here again, the plaintiff has to allege that he is she tenant of the land the possession of which he seeks. He has further to allege that he has been ejected by the landlord or any person claiming as landholder or by any person admitted to or allowed to retain possession of the holding by such land-holder or person. Unless both these allegations are made no suit under Section 183 is maintainable. In the present suit no such allegations, as are required to be made under Section 180 or 183, were made. It is clear, therefore, that the present suit could not be entertained under those sections.

10. It is urged that the "cause of action" in respect of which the relief is being chimed in the present suit is one in respect of which relief could be claimed under those sections though express allegations bringing the case under them have not been made.

11. This argument discloses a confusion of thought. A 'cause of action' is the sum total of all those allegations upon which the right to the relief claimed is founded. 'A suit' is the sum total of the 'cause of action' and the 'relief' claimed. It has been shown already that for a suit under Section 180 or 183 an allegation of 'title' to the land either as owner, or tenant or other wise has to be made. This allegation forms an essential part of the 'cause of action' for the suit. In the absence of this allegation, no relief could be claimed under sections 180 or 188.

12. In Lal Bahadur Singh v. Surajpal Singh, 1946 A. L. J. 201 : (A. I. R. (33) 1946 ALL. 486) the allegations in the plaint were that the plaintiff had been in possession of certain plots of land within six months and had been dispossessed of them by the defendant. No allegations in respect of the plaintiff's title were made. The suit clearly lay in the civil Court.

13. In Beni Madho Singh v. Prag, 1949 A. L. J. 24 : A. I. R. (36) 1919 ALL. 510) the plaintiff alleged that the predecessor-in-interest of the defendant had mortgaged with possession the plots in dispute to the plaintiff's predecessor-in-title, that under the mortgage the plaintiff's predecessor-in title and also the plaintiff held possession over the plots aforesaid: and that after the expiry of the period allowed by law for redemption of the mortgage the plaintiff held possession over the plots as tenant on behalf of the landlord until July 1946 when he was illegally and without his consent dispossessed by the defendant. On those allegations he sued for ejectment of the defendant under Section 9, Specific) Relief Act. One of us held that the suit was maintainable under Section 180, Tenancy Act. The reason was clear. As already observed, jurisdiction of the Court has to be judged from the allegations made in the plaint and not merely by the fact that the plaint is headed as being under a certain section of an enactment. Upon the allegations made in the plaint in that case, the suit was clearly maintainable under Section 180 because the plaintiff had alleged his title to the land. It was observed in that case:

> "The applicant claims to be a tenant of the land on behalf of the landlord and seeks to recover possession over the land by ejectment of the opposite party. In order to determine the real nature of the relief claimed, we have to consider the averments in the plaint and the pith and substance of the relief claimed and not the form in which it has been couched. Applying this test, it most be held that the suit is of the nature contemplated by Section 180, Tenancy Act."

14. In all such cases, therefore, one has to see what the averments in the plaint are. If upon a reading of the plaint, as a whole, we find that the plaintiff claims the relief on the basis merely of his previous possession and dispossession by the defendant, the suit is one which is cognisable by the civil Court under Section 9, Specific Relief Act. If, on the other hand, we find that the plaintiff alleges his title to the land either as tenant or as landlord or in some other capacity and also alleges possession and dispossession by the defendants, the suit is cognisable by the revenue Court either under Section 180 or 188, U. P. Tenancy Act.

15. Applying the test laid down in the above case, we find that in the present suit no averments were made which could have brought it within the purview of Section 180 or of Section 188, U. P. Tenancy Act. The suit was, therefore, not cognisable by the revenue Court under any of the provisions of the U. P. Tenancy Act.

16. We see no force in this revision and we dismiss it with costs.