Soman And Ors. vs Kedar Nath on 3 April, 1951

Equivalent citations: AIR1953ALL254, AIR 1953 ALLAHABAD 254

JUDGMENT

Misra, J.

1. This appeal arises out of two suits instituted by Kedar Nath, plaintiff-respondent, for recovery of possession over a number of plots in village Kundri and for damages. One of them was against Soman and three others and related to nine plots measuring 3.15 acres and Rs. 400 damages. The other was against Soman alone and related to two plots measuring 4.9 acres and BS. 200 damages. The plaintiff claimed to be a hereditary tenant of the lands in suit. He characterized the defendants as trespassers who had entered into occupation since 1351F. The defendants contended that they were sub-tenants of over thirty-two years standing since the time of plaintiff's cousin, Indarjit, and that the plaintiff took over the plots from the aforesaid tenant-in-chief under some arrangement in 1351 and acknowledged the defendants' sub-tenancy on the same rent as before, namely, ES. 61 per annum; and that the suit for possession and damages was not maintainable in the civil Court. The issue of subtenancy was referred to the revenue Court and was decided both by that Court and the Court of appeal against the defendants' contention. The Courts below also agreed in deciding the other issues against the defendants. The latter have come up now by way of second appeal.

2. The appellant's learned counsel has raised two contentions on behalf of his clients :

> (1) That the suit was not cognizable by the Revenue Court, and (2) That the appellants were sub-tenants and entitled to the benefits of Section 47 (4) read with Section 295-A, U. P. Act.

3. The second contention, in my opinion, has no force. Section 47 (4) makes an exception to the general rule enunciated in Sub-section (1) in favour of sub-leases made after 1st January 1902. It lays down that if a tenant-in-chief surrenders or abandons a holding or dies without leaving an heir, all covenants of the sub-lease shall he binding and enforceable as between the tenants landholder and the sub-tenant for the remainder of the term of the lease or for five years whichever period may be shorter, on the rent on which he held under the tenant or at the rent at which the tenant held the land if that rent be more than the rent paid to him by the sub-tenant. The defendants have failed to prove that they were sub-tenants with any unexpired period of tenancy. The utmost length to which it may be possible to go to uphold their rights is that they were sub-tenants from year to year of Indarjit who surrendered the holding in 1851F, corresponding to 1942-43. It follows that their sub-tenancy came to an end with the surrender. Section 295-A merely provides that all subtenants

would be entitled to retain possession over their holdings for five years from the date of commencement of the Amending Act 10 of 1947. The section could have no operation so far as tenancies already extinguished are concerned.

4. On the point of jurisdiction, the appellants, in my judgment, are entitled to succeed. The decision of the Courts below was obviously founded on the Full Bench case of Ori Lal v. Ganeshi, 1947 oudh w. N. 42, which lays down that a suit by a tenant who is dispossessed of the whole or portion of his holding by a person other than those referred to Section 183, U. P. Tenancy Act, lies in a Civil Court and is not a suit as contemplated by Section 180 of the Act. The view taken thus was that word 'tenant' used in Section 180 in the expression 'without' the consent of the person entitled to admit him as 'tenant' did not include a sub-tenant. The law on the subject was, however, altered by substantial amendments of Section 180 of the Act by Act 10 of 1947. Explanation 2 now appended to 8. 180 makes it clear that a tenant entitled to sublet the plot of land in accordance with the provisions of law for the time being in force may maintain a suit under that section against a person taking or remaining in possession of the plot otherwise than in circumstances for which provision is made in Section 183. Section 242 provides that suits and application of the nature specified in the fourth schedule must be heard and determined by a revenue Court and no Court other than a revenue Court, shall except by way of appeal or revision, 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 and explanation 2 newly added to the section shows that if the cause of action is one in respect of which any relief may be granted by the revenue Court under Section 180 it is immaterial that the relief that may be asked for from the civil Court is greater than or additional to that which the revenue Court could have granted. The example which the section gives clarifies the position farther by showing that if in a suit under Section 180 a person claims damages exceeding four times the annual rental value, he may not oust the jurisdiction of the revenue Court by framing his relief as such.

5. The suits which give rise to these appeals were filed on 3rd April 1947, before the Amending Act of 1947 came into force. The Act was published in the U. P. Gazette on 14-6-1947, and the Amendment must be deemed, by reason of Section 5, General Clauses Act, to have come into force from that date. The suit was at the time still pending in the trial (Munsif, Bahraich). It was not decided by the trial Court till 14-7-1948. In other words the jurisdiction of the learned Munsif was taken away by the amended Section 180 read with Section 242 and the two cases were made exclusively cognizable by the revenue Court. Alterations in the form of procedure are always retrospective unless there is reason to hold otherwise. The statute as it now stands after the amendment of 1947 does not affect the rights of the parties. It is well-known that no one has a vested right in procedural law. The amendment of Section 180 must, therefore, be held prima facie to be applicable to all pending as well as future actions. The position is very different from that in Basdeo Singh v. Bharat Singh, 1949 ALL. w. R. (h. c.) 121, where the new procedure came into force after the termination of the case in the Court of first instance. It is urged on behalf of the respondent that the absence of a provision in the Amending Act enjoining the transfer of cases rightly filed in the civil Court to Courts of revenue on the coming into force of Act 10 of 1947 implied that pending suits should be disposed of in accordance with the law which prevailed at the date of the filing of the plaint and the Legislature did not intend to divest the civil Courts of jurisdiction to decide such cases. I am unable to agree with

this contention. The argument is based principally on Section 6, U. P. General Clauses Act, which lays down that the repeal of an Act shall not affect any remedy or any investigation or legal proceeding commenced before the repealing Act shall come into operation in respect of any such right, privilege, application, liability, penalty, forfeiture or punishment under the repealed enactment. It has to be kept in mind, however, that this section applies in the first place to cases where an enactment is repealed. In the second place, it does not in any case operate to confer jurisdiction where jurisdiction has by operation of the new enactment been taken away and vested elsewhere than in the Court where the suit was instituted. The cages cited on behalf of the respondents were Bam Singha v. Shankar Dayal, 50 ALL. 965 (F. b.); Hitchcock v. Way (1837) 112 E. r. 360; Restall v. London & South Western Rly., (1868) 3 EX. 141; Butcher v. Henderson, (1869) 3 Q. b. 335; Hurst v. Hurst, (1882) 21 ch. p. 278; and Wright V. Hale, (1860) 30 L. j. eX. 40. None of them is in point because the alteration in law in each of them except in the case of Hitchcock v. Way took place after the termination of the suit in the Court of first instance, and in Hitchcock's case the amendment of the law related to vested right and not to pro-cedure. As stated in Halsbury's Laws of England Vol. 31, Para. 673, there is no rule that where a person has commenced an action, he has a vested right in the then state of law. There is no in, superable objection in the present ease to cons-truing the language of the statute so as to make it apply to pending proceedings. In fact the language used by the Legislature both in Section 180 and Section 242 of the Act as it now stands warrants such a course.

6. It follows from what has been said above that by reason of the amending Act, the learned Munsif lost jurisdiction to determine the suits which give rise to these appeals. The jurisdiction to try them vested in the revenue Court from 14-6-1947. The decree of the trial Court was there-fore, without jurisdiction.

7. I allow the appeals, set aside the decisions of the Court below and remand the two cases to the Court of the learned Munsif, Bahraich, with the direction that the plaints be returned to Kedar Nath, respondent, for presentation to the proper Court. The parties will bear their own costs. The stay order is vacated.