Rustam Singh And Ors. vs Gopal Singh on 26 September, 1950

Equivalent citations: AIR1951ALL437, AIR 1951 ALLAHABAD 437

JUDGMENT

Agarwala, J.

1. This is a plaintiffs' appeal against an order of the lower appellate Court returning the plaint for presentation to the proper Court.

2. The plaintiffs sued for the ejectment of the defendant from a plot of land which the plaintiffs claimed was their sir land. The plaintiffs alleged that the defendant had taken unlawful possession over the plot in the month of July, 1944 sometime before the institution of the suit and that he was a trespasser and liable to be ejected. They also claimed certain damages.

3. The defence was that the defendant was a co-sharer himself and was in possession over the plot and that he was in adverse proprietary possession for over 12 years. He further alleged that the suit was barred by Section 180, U.P. Tenancy Act.

4. The trial Court held that the suit was not barred by Section 180 (2), Tenancy Act, hereditary rights could not accrue in favour of the defendant in respect of the sir land and decreed the suit. On appeal the lower appellate Court held that the reasoning of the trial Court that hereditary rights could not accrue in respect of sir land was unsound in law and that the suit was not maintainable in the civil Court as it could have been instituted in the revenue Court under Section 180, U. P., Tenancy Act. In the result it passed the order already mentioned above.

5. In this appeal it has been urged that Section 180, U. P. Tenancy Act, did not apply to the suit inasmuch as the defendant claimed the land not as a tenant but as a co-sharer and pleaded adverse proprietary title. I consider that this contention is well-founded.

6. Under Section 180, U. P. Tenancy Act, a person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot otherwise than in accordance with the provisions of the law for the time being in force, is liable to be ejected in a suit in the revenue Court. Under Sub-section (2) of that section, it is provided that if no suit is brought under that section, the person in possession shall become a hereditary tenant of the land in dispute. There has been a recent amendment in this section, but we are not concerned with that amendment as the suit was instituted in the civil Court before the Amending Act was passed.

7. Now two interpretations could possibly have been put upon the section. It could have been held that if the plaintiff satisfied the condition that he could admit the defendant as a tenant of the land in dispute and the defendant was in possession of the land without the consent of the plaintiff, or

otherwise than in accordance with the provisions of the law for the time being in force, he was liable to be ejected irrespective of the question whether he was claiming as a proprietor himself or as a tenant, and that in either event he would become a hereditary tenant under Sub-section (2) of Section 180, so that all suits against trespassers lay in the revenue Court without exception provided the conditions laid down in Sub-section (l) of Section 180 were fulfilled. Or it could have been held that the intention of the legislature, as shown by Sub-section (2) of Section 180, was that Section 180 would apply to cases where the defendant was claiming such a title in himself which could possibly mature as a hereditary tenancy right and that it was only in those cases that Section 180 could apply, so that in all other cases suits against trespassers would lie in a civil Court.

8. If the first interpretation were adopted the suit would create an anomaly that whereas a person was claiming to hold certain piece of land as a proprietor, he was to become a hereditary tenant by adverse possession and this would be against all accepted notions of title accruing by adverse possession.

9. This Court has put the second interpretation upon the section. In D. N. Rege v. Muhammad, Haider, A. I. R. (33) 1946 ALL. 379 : (I. L. R. (1946) ALL, 692 F. B.) it was laid down by a Pull Bench that:

> "It seems to us quite clear from the provisions of this Sub-section (2) that the section itself applied to persons who are setting up a claim to an interest in the land as tenant and not to persons who are setting up an interest as proprietors. The Legislature could surely not have intended that a person who never claimed to be a tenant at all should, by the failure of the proprietor to sue or to execute a decree for ejectment under Section 180, obtain the rights of an hereditary tenant."

Then their Lordships proceeded to hold :

> "We, therefore, think that there cannot be any doubt now that the distinction between an ordinary suit against a trespasser in a civil Court and a suit under Section 180, U. P. Tenancy Act, 1939, is that the plaintiff in the first case alleges that the defendant is setting up a title against his proprietary interest whereas in the second case the plaintiff alleges that the defendant is setting up a title to hold the land as a tenant. We do not think that Section 180 applies at all to cases in which the defendant has never given the plaintiff reason to think that he is setting up a claim to be the proprietor of the land and conversely that a suit in a civil Court does not lie when the defendant has given the plaintiff reason to think that he is claiming an interest as a tenant."

10. In the present case, the defendant has clearly set up a proprietary title in himself. He never claimed tenancy tights in the plot in dispute. The plaintiffs had no reason to think that the defendant was claiming anything other than proprietary rights. They were, therefore, bound to bring the suit in the civil Court.

11. It is true that the jurisdiction of the Court is governed by the allegations in the plaint and not by what is pleaded by the defendant. It is further true that, in the present case, the plaintiffs did not allege that the defendant was claiming proprietary right in himself. It would have been better for the plaintiffs, when they brought the suit in the civil Court, to allege that the defendant was claiming proprietary right, but their failure to do so does not oust the jurisdiction of the civil Court. If the defendant pleads that he is holding the land as a proprietor, the plaintiffs need prove nothing further and their suit will be considered as having been rightly instituted in the civil Court, If, however, the defendant pleads that he is holding the land as a tenant, then in order to determine the jurisdiction of the Court, the Court will have to ascertain whether any indication of the defendant's claim as a tenant was given to the plaintiffs before the institution of the suit. If it finds that there was such an indication then it will hold that the suit does not lie in the civil Court and will return the plaint for presentation to the proper Court. If, however, it finds that there was no such indication, it will retain the plaint on its file and send an issue as to tenancy to be determined by the revenue Court.

12. In the present case, as the defendant pleaded that he was holding the land as a proprietor, the suit was clearly maintainable in the civil Court. The order of the Court below must, therefore, be set aside.

13. Accordingly, I allow the appeal, set aside the order of the lower appellate Court and remand the case to that Court for decision according to law.

14. The plaintiff will have their costs of this appeal. The costs of the lower appellate Court shall abide the result.