

Ishwar Din And Ors. vs Ch. Mohd. Ishaq And Anr. on 17 January, 1952

Equivalent citations: AIR1952ALL496, AIR 1952 ALLAHABAD 496

ORDER

Beg, J.

1. This is a defendants' appeal against an order of remand by the lower appellate Court in a suit for injunction filed by the plaintiff. The suit was brought by the plaintiff on the allegation that he, along with his two brothers, was the absolute owner of the plots in dispute. According to the allegations in the plaint, the plaintiff was in full possession of the said plots but defendants 1 to 7 were threatening to take forcible possession of the same. The plaintiff also alleged that defendants 1 to 7 were claiming their title through defendant 8, who was putting himself up as mutwalli, under a certain waqf and against whom the plaintiff had got a decree deciding the question in favour of the plaintiff and declaring that the said waqf was not valid. The plaint accordingly claimed a relief of permanent injunction against all the defendants.

2. The written statement of defendants 1 to 7 alleged that the defendants were tenants of the plots in dispute through defendant 8, who was the lamlardar and owner of the land in question and against whom the defendants had also obtained a decree from the Revenue Court. The defendants also took the plea that the suit was not within the jurisdiction of the civil Court.

3. The suit was filed in the Court of the Munsif, Barabanki, who framed a preliminary issue on the question of jurisdiction. The trial Court decided the issue in favour of the defendants and returned the plaint for presentation to the proper Court. The plaintiff filed an appeal against the said order, The learned District Judge reversed the order of the trial Court, held the suit to be within the jurisdiction of the civil Court and remanded it for trial by the Munsif. Dissatisfied with the order of, remand passed by the learned District Judge, the defendants have filed this appeal against it.

4. The sole point argued by the learned counsel for the appellant is that the suit was not cognizable by the civil Court and the order of the trial Court returning the plaint for presentation to the proper Court was a correct one. It may be mentioned at the very outset that this question is being agitated as a preliminary issue. In determining the question of jurisdiction at the initial stage, the Court is confined to the allegations in the plaint and has to accept them as correct. The position would be different after the suit has gone through all the stages of trial and the Court has given a finding as to whether those allegations are correct or otherwise. At the preliminary stage the jurisdiction of the Court must be determined by the allegations contained in the plaint itself. At the conclusion of the trial, the jurisdiction of the Court would be determined by the findings arrived at by the trial Court.

If the allegations in the plaint are taken to be correct, then it is evident that the plaint as it stands could not have been filed in the revenue Court. The plaintiff has clearly asserted that he was in possession of the plots in dispute, that he was the owner of the same, that he was cultivating them as khudkhasht holder, that the defendants were setting up title through a person who was not (sic) a trespasser and that the defendants had threatened to take forcible possession of the land. On these allegations the only course open to the plaintiff was to file a suit for permanent injunction which he has done in the present case. The plaint nowhere alleges that the defendants were claiming title as tenants or that there was any substance behind any claim of tenancy.

The learned counsel for the defendants has invited my attention to Section 63, U. P. Tenancy Act. The said section would apply only if the suit is for a declaration that the property in dispute constitutes the sir or khudkast land of the plain-tiff. The present suit is not one for a declaration at all. It is a suit for injunction. He has cited a large number of cases in support of his argument, none of which seems to me to be applicable to the facts of the present case.

5. In *Nageshar Ram v. Bansbahadur Singh*, A. I. R. (37) 1950 ALL. 532, it was laid down that where in a suit for possession of plots against a trespasser, the plaintiff knows that the defendant is claiming to be in possession not as a proprietor but as a tenant, the suit lies in a revenue Court and not in a civil Court. The present suit is not for possession of plots and there is no averment in the plaint showing that the plaintiff was aware of the defendants' claim as tenants.

6. The next case relied on by the learned counsel is *Mt. Ananti v. Chhannu* (A. I. R. (17) 1930 ALL. 193 (F. B.)). It is a Full Bench case which lays down that if a suit for possession and mesne profits substantially falls under Section 99 and is cognisable by a revenue Court, the mere fact that a relief for perpetual injunction has been added will not take the case out of the jurisdiction of the revenue Court. In the present case the relief for injunction is not a mere addition to other reliefs claimed but is the sole and the main relief claimed and accordingly the law laid down in this case will be inapplicable to the facts of the present case. The Full Bench also held that the jurisdiction of the Court is to be initially determined by the allegations made in the plaint and the allegations made in the written statement cannot oust the jurisdiction unless and until the allegations have been gone into, tried judicially and found to be true and the plaintiff's allegations found to be false. This part of the judgment is in support of the plaintiff's case that his plaint cannot be thrown out initially on the ground that the allegations contained are untrue.

7. The next case to which my attention has been invited by the learned counsel is *Shyam Lal v. Hira Nath*, 1934 R. D. 806. It laid down that under Section 280, Tenancy Act, 1926, if adequate relief could be granted by the revenue Court, it would be immaterial that the relief asked for from the civil Court is not identical with that which the revenue Court could have granted. Thus, if a suit be in its essence cognizable by a revenue Court, the addition or a prayer for injunction will not take the case out of the cognizance of that Court. In the present case, as I have said above, the prayer for injunction is not a mere addition but is the main relief asked for in the case and is the proper relief that should be asked for, if the allegations contained in the plaint are accepted to be correct.

8. The next case referred to by the learned counsel is another Full Bench case in *D.N. Rege v. Muhammad Haider*, A. I. R. (33) 1946 ALL. 379 (F. B.) which lays down that jurisdiction of a Court does not depend upon the defence which is set up after the suit is instituted but upon the state of affairs which existed before the institution of the suit. A plaintiff, however, cannot give either the civil Court or the revenue Court jurisdiction by making false allegations in his plaint. The jurisdiction of civil and revenue Courts cannot be concurrent but depends on the allegations made in the plaint provided that those allegations are established to be true. In the present case the plaintiff has never been allowed an opportunity of establishing his allegations to be true, as the issue has been raised as a preliminary issue. In, the Full Bench case referred to, the question was argued after the evidence had been gone into and the plaintiff's allegations had been found to be false. Under these circumstances this case has no bearing on the question at issue in this case.

9. The last case cited in support of the appellant's argument is *Mt. Ram Kuer v. Iqbal Narain Singh*, A. I. R. (34) 1947 ALL. 92. In this case the plaintiff came to Court with the allegation that the defendants had obtained a rent decree in revenue Court. It was also alleged that there were ejectment proceedings in the revenue Court. The plaintiff came to the civil Court with the allegations that all proceedings which were taken in the revenue Court were fraudulent and were resorted to for the purposes of establishing the title of the defendants as tenants and for damaging her own rights. It is evident that in this case the plaintiff came to Court with the allegations that the defendants were setting up title as tenants. The plaint alleged that the defendants had obtained a decree from the revenue Court on the basis of that title. The plaintiff was, therefore, fully aware of the title set up by the defendants. Moreover, the only relief claimed by the plaintiff was one of the declaration. In the present case the only relief claimed by the plaintiff is one of injunction. The facts of this case, therefore, have no application to the present case.

10. The only case, the facts of which are closely analogous to the facts of the present case, is reported in *Rati Ram v Shri Krishna*, A. I. R. (36) 1949 ALL. 267. The view taken therein clearly supports the case of the plaintiff. This is a single Judge decision of the Allahabad High Court, which lays down that where a defendant's claim to a tenancy is based on the title of a third party and that third party either by a decree of a competent Court already existing or by common consent has himself not a shadow of title, the defendant cannot be credited with any appreciable position as that of a tenant legally so called. In a suit for possession over certain agricultural plots, the plaintiff stated that the defendants were claiming a cultivatory right through a person who himself had no title in the plots inasmuch as the deed of trust on which that person was relying had itself no legal foundation. The plaintiff did say that the defendants were claiming to be tenants of the plots in suit, but added that in the circumstances the defendants' claim had only an airy foundation.

It was held that the plaintiff definitely treated the defendants no better than mere trespassers and the civil Court had jurisdiction to entertain the suit and the plaintiff's allegation that the defendants were claiming as tenants, in the circumstances of the case, did not amount to an averment which would oust the jurisdiction of the civil Court. The facts of the present case are stronger in so far as the plaintiff has not even stated that the defendants are claiming to be tenants. On the other hand, the allegations in the plaint clearly indicate that the defendants are no more than rank trespassers.

11. In view of the law discussed by me above, I have come to the conclusion that the judgment of the lower appellate Court is correct and cannot be disturbed in appeal. This appeal is hereby dismissed. As no one appears on behalf of the respondent, I pass no order as to costs.

12. The stay application, fixed along with this appeal, has become infructuous and is dismissed.