Tilakdhari Misra vs Dhondha Ahir on 4 February, 1950

Equivalent citations: AIR1950ALL439, AIR 1950 ALLAHABAD 439

JUDGMENT

Desai, J.

1. The appellant is a co-sharer in the village and sir-holder of the land in dispute. The respondent took forcible possession of the land in dispute in 1935 or thereabout without the consent of the appellant and has been cultivating it since then. These facts are not in dispute. The appellant sued the respondent for his ejectment from the laud in dispute in a Munsif's Court on 31.5-1944. The suit was contested by the respondent on the grounds that it was barred by limitation and that he had become a hereditary tenant of the land. An issue about the tenancy rights claimed by him was referred by the learned Munsif to a revenue Court for its finding. The revenue Court found that the respondent should have been ejected by the appellant Under Section 180, U. P. Tenancy Act within three years and that on account of his failure to do so the respondent has now become a hereditary tenant. On receipt of this finding the learned Munsif decided the other issues and held that the suit of the appellant was within time but dismissed it in view of the finding of the revenue Court to the effect that the respondent has become a hereditary tenant. The appellant went up in appeal but failed there and has come up in second appeal.

2. The sole question is of jurisdiction and limitation. The question of jurisdiction is intimately connected with the question of limitation. If Section 180 governs the facts of the case, Section 242 would step in to prevent a civil Court's assuming jurisdiction over the dispute, only a revenue Court would have jurisdiction and the period of limitation would be three years. If, on the other hand, Section 180 does not apply, a civil Court would have jurisdiction and the case would be governed by the twelve-year rule of limitation.

3. Section 180 of the Act has been amended in 1947, but the amendment does not affect the present case. Still, as the suit was instituted and decided, and the first appeal also was instituted and decided, before the amendment came into force, it would be proper to deal with the case on the basis of the section as it stood before the amendment. The words of the section are wide enough to cover the present case and this was conceded by the learned counsel for the appellant. There is nothing in the words of Sub-section (1) to suggest that ejectment of a trespasser from a sir plot is not governed by it. But it was contended that Sub-section (2) restricts the scope of Sub-section (1). Sub-section (2) only provides for the effect of the failure to sue as provided in Sub-section (1) and I do not know how far it would be right to say that it restricts the scope of Sub-section (l). But even if it does restrict, I am not at all satisfied that it restricts it to such an extent that it would not govern the case of ejectment from sir land. If no suit is brought as permitted under Sub-section (1), the person in possession would, on the expiry of the period of limitation prescribed for the suit, become a hereditary tenant of the land. It was argued that hereditary rights cannot accrue in sir land and that

consequently ejectment of a trespasser from sir land is not governed by Sub-section (1). I do not see any substance in the premise. It is laid down in Section 11 (b) of the Act that sir land loses its sir character when under the provisions of the Act hereditary rights accrue in it. These rights accrue in sir laud Under Sections 12, 14, 15 and 16. But these are not the only provisions under which hereditary rights can accrue in sir land; they can accrue also Under Section 180 (2). There is no reason for holding that Section 11 (b) does not contemplate the case of accrual of hereditary tights Under Section 180 (2). If on the accrual of hereditary rights in sir land Under Section 180 (2) the land would lose its character of sir, there is nothing to prevent the accrual of hereditary rights. It is stated in Section 29 of the Act that every person who is at the commencement of the Act a tenant of land otherwise than as a tenant of sir, a permanent tenure-holder, etc. would become a hereditary tenant. This means that a tenant of sir cannot become a hereditary tenant so long as the land retain its character of "sir". This provision has no application when simultaneously with the accrual of hereditary rights the land loses its character of "sir". I, therefore, agree with the lower appellate Court that hereditary rights can accrue in a sir plot under Sub-section (2) of Section 180 and that consequently there is no reason to hold that ejectment of a trespasser from sir land is not contemplated by Section 180.

4. As I said earlier, the words of Sub-section (1) of Section 180 are wide enough to cover all cases of wrongful possession of land. This Court has gone quite far in restricting the scope of those words in D. N. Rege v. Muhammad Haider, 1946 A. L. J. 369:(A. I. R. (33) 1946 ALL. 379 F.B.) in which it was held that they do not govern ejectment of a person who sets up adverse proprietary rights. I am not prepared to go farther and hold that they do not govern ejectment from sir land also. The learned counsel for the appellant placed a good deal of reliance upon Rege's case, 1946 A. L. J. 369: (A. I. R. (33) 1946 ALL 379 F.B.) but actually I find that it does not help him at all. It is stated at p. 371:

> "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. We would point out that the 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."

The appellant alleged in his plaint that the respondent has no concern with the proprietary rights in the land in dispute, that he forcibly entered into adverse possession of it nine years previously, and that his possession is adverse and without any right. He did not at all allege what right was set up by the respondent in the land. If he sued in the civil Court under the twelve year rule of limitation, it was for him to plead specifically that the respondent claimed to be in adverse proprietary possession

of the land, but he did not take any such plea. Unless he took such a plea, he could not exclude his case from the ambit of Section 180 (l). If the respondent never gave him reason to think that he was setting up a claim to be the proprietor of the land, he could not sue him in the civil Court. The Full Bench made the position clear towards the end of the judgment by stating that:

> "The jurisdiction is not concurrent but depends on the allegation made in the plaint provided those allegations are established to be true."

Here the appellant failed to make any allegations which would bring his case within the jurisdiction of the civil Court and there did not arise any question of his establishing them to be true.

5. The respondent's ejectment was governed by Section 180 (l) and the appellant failed to take the plea which would take the case out of that provision. The Courts below rightly dismissed his suit, and I dismiss this appeal with costs.