

Mst. Sunder Kali And Anr. vs Pateshwari Prasad Singh And Ors. on 5 April, 1954

Equivalent citations: AIR1954ALL651, AIR 1954 ALLAHABAD 651

JUDGMENT

Randhir Singh, J.

1. This is an execution appeal against an order passed by the Revenue Officer of Gonda on 20-5-1946 ordering ejectment of the appellant from a part of his holding under Section 168, U. P. Tenancy Act.

2. It appears that a decree for arrears of rent was passed against the appellant on 27-3-1943. The decree-holder applied for execution on 30-11-1943, but his execution remained infructuous and the file was ultimately consigned to the record room on 17-1-1944. On 18-5-1945, the decree-holder applied for issue of a notice under Section 168, U. P. Tenancy Act, as the decree for arrears of rent, which had been passed against the appellant on 27-3-1943, had remained unsatisfied. Objections were filed to this application of the decree-holder on behalf of the appellant. The main grounds on which he opposed, the application were that he was an under proprietor & not a permanent lessee and as such the decree-holder had no right to make an application under Section 168, Tenancy Act; that the application was barred by time, and lastly that the appellant was not liable to ejectment as the decree-holder had not exhausted all remedies which lay in execution against the appellant.

The learned Revenue Officer found that the appellant was not an under-proprietor but was a lessee. He also held that the application was not barred by time and that it was not necessary for the decree-holder to exhaust all remedies by way of execution before making an application under Section 168 of the U. P. Tenancy Act. He, therefore, ordered ejectment of the appellant from a part of the holding. The appellant has now come up in appeal.

3. The learned Counsel for the appellant does not now press the first two points, that is, he does not now challenge the finding of the lower court that the appellant was not an under-proprietor or that the application was barred by time. The only ground which he has pressed in arguments before us is that the decree-holder was not entitled to avail himself of the remedy provided by Section 168, U. P. Tenancy Act, as he had not exhausted all the modes of execution which were open to him before making an application under Section 168 of the Tenancy Act. Section 168 runs as follows :

"168(1) When a decree for arrears of rent against an ex-proprietary, an occupancy or hereditary tenant has not been completely satisfied within one year from the date of such decree by any mode of execution other than sale of holdings, the land-holder may apply to the Court which passed the decree for the issue of a notice to the tenant for payment of the amount outstanding and for his ejectment in case of the default

and the Court shall thereupon issue such notice."

A perusal of the words quoted above clearly shows that it was not the intention of the legislature that a decree-holder should exhaust all remedies in execution before making an application under Section 168, of the U. P. Tenancy Act. Learned Counsel for the appellant has not been able to show us any authority in support of his contention. There seems to be no force in the contention raised on behalf of the appellant. The order passed by the lower Court was, therefore, a perfectly good order.

4. Another point which has been pressed on behalf of the appellant is that the appellant had become a 'sirdar' in view of the provisions of Section 19(ix) of the Zamindari Abolition and Land Reforms Act. It is not disputed that the appellant was actually ejected from the holding on 26-6-1947. The appellant already having lost possession of the holding, and the order passed by the Revenue Officer having been found to be a good order, no relief can be given to the appellant under Section 19 of the Zamindari Abolition and Land Reforms Act.

5. The appeal is therefore dismissed with costs to the respondents.