

Mst. Rukmin And Anr. vs Babu Ram And Ors. on 17 August, 1953

Equivalent citations: AIR1954ALL192, AIR 1954 ALLAHABAD 192

JUDGMENT

Randhir Singh, J.

1. This is a second appeal in a suit under Section 183, U. P. Tenancy Act. It appears that one Smt. Radha was the tenant of the khata in dispute in this case. She died in November 1943 and disputes arose over her tenancy rights. The defendants entered into Possession of the khata and the plaintiff Mulhay then instituted the suit which has given rise to the present, appeal for possession of the khata on the allegation that he was the own brother of Smt. Radha & as such succeeded to the tenancy rights of Smt. Radha. A claim for damages was also made along with the claim for possession. The plaintiff had mentioned in the plaint that defendants 1 to 3 were in possession of the khata on behalf of the zamindars who were defendants 4 to 6.

2. The suit was contested by defendants 1 and 2 on the ground that the plaintiff was not the brother of Smt. Radha and as such was not entitled to succeed to the tenancy rights of Smt. Radha. It was also pleaded that the suit was not cognizable by the Revenue Court.

3. The lower Court found that Mulhay was the own brother of Smt. Radha and as Smt. Radha was the original tenant her tenancy would pass to her brother. It also found that the suit was cognizable by the Revenue Court. The trial Court ultimately decreed the claim. Mathura defendant then went in appeal to the District Judge who upheld the decision of the trial Court. Mathura defendant has now come up in second appeal.

4. It may incidentally be mentioned that there were two suits, Nos. 82 and 83 of 1946, which were in respect of two different khatahs, but an appeal has been instituted only against the decree in suit No. 83 of 1946.

5. The appellant has submitted to the findings of the two Courts below on the question of fact that Smt. Radha was the original tenant of the holding and had not inherited it from her husband and as such Mulhay being the brother of Smt. Radha was entitled to succeed to the rights of tenancy of Smt. Radha. The only point which has been pressed in appeal in this case is that the suit was not cognizable by the Revenue Court and as such should not have been entertained by the Revenue Court.

6. In support of the contention pressed on behalf of the appellant, learned counsel has cited a ruling of the late Oudh Chief Court, --

'Ori ,LaI v. Ganeshi', AIR 1947 Oudh 104 (FB) (A). In this ruling distinction which ought to be observed under Sections 180 and 183, and in suits which are not covered by either of the two sections, have been clearly brought out. It is however not necessary to enter into the ratio on which this reported case is decided inasmuch as the facts of the present case do not attract the application of this ruling at all. It is not disputed by the learned counsel for the appellants that a suit by a tenant against a person who is holding land either on behalf of the landlord or who has been allowed to continue in possession of the land belonging to a tenant by a landlord would lie under Section 183, Tenancy Act in the Revenue Court, in the present case the plaintiff specifically pleaded in the plaint that defendants 1 to 3 had been let into possession or were in possession of the Khata in dispute with the consent, collusion and connivance of defendants 4 to 6 who were the landlords. A joint written statement was also filed on behalf of defendants 4 to 6 who admitted in the written statement that defendants 1 to 3 had paid rent to them and they did not object to their possession. This clearly shows that defendants 1 to 3 had been allowed to remain in possession by the zamindars or landlords.

7. It has been argued on behalf of the ap-pellants that deft. 1 was in possession of the khata in spite of the landlord as he had succeeded in getting his name entered in the khatauni by the Revenue Court. It would not make much difference even if the landlord who did not originally agree to admit a person as a tenant subsequently agreed to admit him to the tenancy or does not object to the tenancy of a person after a contest and further accepts rent from him. If he has done so, the application of Section 183, U. P. Tenancy Act would be attracted and a suit against such a person would lie only in the Revenue Court. There is, therefore, no force in the contention of the learned counsel for the appellants and the findings of the Court below on this point are correct.

8. No other point has been pressed in arguments. The result is that the appeal is dismissed with costs to the respondents.