Lallu vs Bachchu Singh And Ors. on 23 September, 1953

Equivalent citations: AIR1954ALL355, AIR 1954 ALLAHABAD 355

JUDGMENT

Kidwai, J.

1. This appeal arises out of a suit instituted in the civil Court on the 23rd of July 1946 for possession over certain cultivatory plots. The plaintiff claimed that he was the muafidar and that the defendants were trespassers who had taken possession of the land during his absence from the Province and that consequently he was entitled to obtain possession. One of the issues raised in the trial Court was the issue as to the jurisdiction of the Civil Court to decide the suit. Many other pleas were also taken and decisions were given by the trial Court upon them but the only point, apart from the question of court-fee, that has been decided by the Civil Judge of Unnao in appeal, is the question of jurisdiction which is the only point that has been argued before me.

2. It is necessary to note that while the suit was still pending in the trial Court, Section 180 of the U. P. Tenancy Act was amended and the amended Section was given retrospective effect in certain circumstances. We are not concerned with the retrospective effect, that was given to Section 180, U. P. Tenancy Act because, as I have already stated, the suit was still pending on the date on which the amending Act was passed and since it affected the question of procedure, namely the question as to which court was to try the suit, it had immediate effect, and as soon as the Act provided for the decision of such questions by the revenue court, the civil Court ceased to have jurisdiction and it was necessary that the suit be sent to the revenue court for disposal.

3. In order to meet this position, it was contended by the learned Advocate for the appellant that even under the amending Act Section 180 would not apply since the plaintiff's claim as a muafidar was not covered by Section 180. It is pointed out that Section 180 provides only for a suit against 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.

It is contended that a muafidar is not allowed to sub-let the land and that, therefore, he was not a person authorised to admit another person to the occupation of such land. The definition of a tenant in Section 3, Sub-section 23 was relied upon to indicate that a muafidar is not a tenant and is, therefore, not entitled to the rights of a tenant. It was further contended that in view of the cases reported in -- 'Gaya Prasad v. Tasadduk Husain', 6 Oudh Cas 110 (A); -- 'Suraj Bakhsh Singh v. Baldeo Bihari', AIR 1919 Oudh 266 (B) and -- 'Bala Din v. Ajudhia', AIR 1925 Oudh 211 (C) a muafidar has no right to transfer or sub-let the land in his possession.

4. It is undoubtedly true that under the Oudh Rent Act the rule was that a muafidar could not even sub-let. The present case, however, is not covered by the Oudh Rent Act but by the U. P. Tenancy Act

and there is nothing in the U. P. Tenancy Act forbidding a muafidar from sub-letting. Indeed Section 3, Sub-section (22) of the Act makes it clear that a Sub-tenant includes a person who holds from a rent-free grantee. In this connection reference may also be made to sections 39 and 42 of the Act. Section 44 only provides as follows-

> "(1) Every transfer, other than a Sub-lease, made by a tenant in contravention of the provisions of this Act, and every Sub-lease made by a tenant of sir, or by a Sub-tenant in contravention of the provisions of Sub-section (2) of Section 39, shall be void.
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> (2) Every Sub-lease made by a tenant in contravention of the provisions of this Act, other than a Sub-lease which is void under Sub-section (1) shall be voidable at the option of the landholder."

and Sub-clause (2) of Section 39 is as follows :

> "(21 No tenant of sir and no sub-tenant shall sub-let the whole or any part of his holding."

5. Thus it is only leases by tenants of sir and by Sub-tenants that are forbiddan. There is nothing to prevent any other class of persons in possession of land from granting sub-leases thereof. Thus a muafidar can grant' a sub-lease.

6. Moreover Section 180 does not deal with a case of sub-leases only but it refers to a person entitled to admit another to occupy such plot. Any person in possession of a plot of land is entitled to admit another person to occupy that plot and the object of Section 180 was that so far as possible all matters relating to tenancy land should be disposed of by the revenue courts. Efforts should be made so to construe the enactment as to give effect to its real objective and in the present case the words used are, in view of the provisions of the enactment which I have already quoted, easily capable of being given the meaning which would bar such a suit as the present one being brought in any court other than a revenue court.

7. It was also contended on behalf of the appellant that Section 198 makes certain provisions of the Tenancy Act applicable to muafidars but that Section 180 is not one of these provisions. The argument proceeded that the inclusion of certain sections meant the exclusion of others. This argument is a perfectly correct argument but it fails to notice that the word "tenant" is not used anywhere in. Section 180 of the U. P. Tenancy Act and that the provisions, to which effect is given by Section 198, were provisions relating to hereditary tenants. Since by the definition of the word "tenant" contained in Section 3, Sub-section (23) a muafidar would not be deemed to be a tenant, he would not be entitled to the benefits of the sections referred to in Section 198, unless such provision was made to that effect. It was for this reason that Section 198 was enacted. It cannot exclude from application sections which are couched in general language like Section 180 and are not confined to suits by hereditary tenants.

8. It was also contended that in the present case there was no assertion in the plaint that any dispute as to tenancy had arisen before the suit was filed. The case of -- D. N. Rege v. Muhammad Haider', AIR 1946 All 379 (FB) (D) was relied upon. That case related to an entirely different set of circumstances and has no application to the present case. That was a case based upon an earlier Pull Bench decision in which it was laid down before the amendment of the U. P. Tenancy Act in 1947 that the forum depended upon the allegations contained in the plaint. If those allegations indicated that the suit was against a person who was alleged to be a tenant or who had claimed tenancy rights before the institution of the suit, the revenue court would be the proper court to decide the point. We are not concerned with the old Section 180 but with the. new Section 180 and this has made matters quite clear. That decision, therefore, cannot help the appellant.

9. Since the present suit is covered by Section 180 of the U. P. Tenancy Act and it had not been decided by the trial Court till long after the enforcement of the amendment made to Section 180 it was the revenue court that had jurisdiction to decide the case. The order of the lower appellate Court, therefore, that the plaint should be returned for presentation to the proper court is the proper order and cannot be set aside.

10. This appeal, therefore, fails and is dismissed with costs.