Mohd. Zahir Hasan And Anr. vs Dulare And Ors. on 7 May, 1953

Equivalent citations: AIR1953ALL729, AIR 1953 ALLAHABAD 729

JUDGMENT

Chaturvedi, J.

1. This is a plaintiffs' application in revision arising out of a suit for the issue of a permanent injunction to restrain the defendants from taking possession over the plots specified in the plaint.

2. The suit was filed in the Court of the Munsif West Allahabad, on the allegations that the plaintiffs were zamindars of the land in suit, which was their 'sir' and 'khudkasht', that the defendants had no manner of right in this land, but they wrongly deposited 10 times the rent and sought to obtain 'bhumidari' rights under the provisions of the U. P. Tenants Acquisition of Privileges Act, and that the defendants were also trying to enter into possession of the land. The actual relief claimed in the plaint was that, on proof of the plaintiff's possession over the land as their 'sir' and 'khudkasht', a permanent injunction be issued to the defendants restraining them from interfering with the plaintiffs' possession of the land in suit. One of the defences taken to the suit was that it was not cognizable by the civil Court and was exclusively triable by the revenue Courts. There were some other defences also, but it is not necessary to mention them for the purposes of this revision. The learned Munsif tried the issue of jurisdiction only, namely, issue No. 3, and came to the conclusion that the suit was not entertainable by him, and ordered the plaint to be returned for presentation to the revenue Court. The plaintiffs went up in appeal, and the lower appellate Court agreed with the decision of the learned Munsif on this point and dismissed the appeal.

3. The learned counsel for the plaintiffs-applicants has strenuously urged before us that the suit was cognizable by the civil Court, inasmuch as the relief that was claimed in the suit was a relief of a permanent injunction which could not be granted by a revenue Court. He has further argued that he has nowhere admitted in the plaint that the defendants are tenants, and" all that he has stated is that they are attempting to obtain possession over the land, and, with that object in view, they deposited certain amounts in the Tahsil with a view to get 'chumidhari' certificates; and that the plaintiffs had taken steps in the revenue Courts for the cancellation of these certificates. We were informed that, after the institution of the suit, some of the certificates have actually been cancelled.

4. The learned counsel for the opposite parties has tried to support the judgments of the Courts below and his submission is that, from the allegations in the plaint itself, it is obvious that the defendants were claiming to be tenants of the land in suit, and the plaintiffs knew of this claim of the defendants before the institution of the present suit.

5. As the above facts would show, the question, which arises, for determination in this revision is whether a plaint containing such averments is entertainable by the civil Courts or not. This question

arises in numerous cases, and is assuming greater importance now because the tendency on behalf of the plaintiffs is to avoid the revenue Courts and obtain a decision from the civil Court. There is nothing improper in this and their preference for the civil Courts is understandable. But the Courts have to follow the law, as it" stands, and give full effect to it.

6. Before proceeding to discuss the different cases that have been brought to our notice in the course of arguments, we may first refer to the statutory provisions bearing on the question. These provisions are contained in Sections 60, 61, 63" and 242 of the U. P. Tenancy Act. They are as: follows:

> "Section 60: " The landholder may sue any person claiming to be a tenant of a holding for a declaration of the right of such person."

Section 61: "At any time during the continuance of a tenancy, either the landholder or the tenant may sue for a declaration as to any of the matters specified in Sub-section (2) of Section 55."

Section 63: "When land claimed by a tenant as his holding or as being under his cultivation is also claimed by the landholder as being held by him as his 'sir' or 'khudkasht', either the landholder or the tenant may sue for a declaration of his status."

Section 242: "Subject to the provisions of Section 286 all suits and applications of the nature specified in the Fourth Schedule shall be heard and determined by a revenue Court, and no Court other than a revenue Court, shall, except by way of appeal or revision as provided in this Act, take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Explanation: If the cause of action "is one in respect of which relief might be granted by the revenue Court, it is immaterial that the relief asked for from the civil Court may not be identical with that which the revenue Court could have granted."

7. It is the last section mentioned above, namely, Section 242, which bars the jurisdiction of the Civil Courts and confers it exclusively on the revenue Courts provided that (i) the suit or application is of the nature specified in the Fourth Schedule, (ii) it is based on a cause of action in respect of which any relief could be obtained by means of any such suit or application. The Explanation makes it clear that if the relief could be granted by the revenue Court, it makes no difference that the relief actually asked for from the civil Court is not identical with that which the revenue Court could have granted.

8. The relief asked for in the suit does not come either under Section 60, 61 or 63 because these sections speak only of a suit for a declaration and not of a suit for an injunction. This is, therefore, not a suit which could be said to be actually specified in the Fourth Schedule, though the suits under the above sections are so specified. The question, therefore that arises is whether this is a suit based on a cause of action in respect of which any relief could be obtained by means of a suit brought under any of the three sections mentioned above.

9. The words "any relief" mentioned in Section 242 are very important, and we might give a brief history of the legislation leading up to the use of the word "any" in this section. In Section 230 of Act 3 of 1926, only those suits came within the purview of the section in which "adequate relief could be obtained" from the revenue Courts. In view of these wordings, what the Courts had to consider was whether the revenue Courts could grant an adequate relief to the plaintiff, and if the revenue Courts were found incapable of granting adequate relief, the suit was held to be cognizable by the civil Courts. The legislature then deleted the word "adequate" from the section as well as from the Explanation. But this Court held that the deletion of the word "adequate" made no difference to the maintainability of the suit in the civil Courts and the section would exclude from the civil Courts only those suits in which the revenue Courts could grant the relief, which the plaintiff claimed, or a substantial portion of it. See -- 'Parmeshwari Das v. Angan Lal, AIR 1944 All 81 (A). It appears that this view was not acceptable to the Legislature and the word "any" was added before the word "relief" in the section, by Section 22 of the U. P. Amendment Act No. 10 of 1947. The section that we have to interpret is this amended section, because the present suit was brought in the year 1950, after this amendment.

10. The last sentence of Section 242 is very widely worded, and every suit now in respect of a cause of action concerning which "any relief" could be granted by the revenue Courts, has to be filed in the revenue Courts and not in the civil Court. In the present case there cannot be any doubt that a suit could have been filed in the revenue Courts for a declaration that the land in suit was the plaintiff's 'sir' and 'khudkasht' and the defendants had no right of tenancy in this land. The relief of the declaration was as much open to the plaintiffs as the relief of injunction, and it does not make any difference whether the relief that the revenue Courts can grant would be an adequate relief or not. Generally speaking, in a suit instituted for obtaining an injunction, a prayer for granting a declaration also can be made. There are really very few suits for an injunction in which a prayer for a declaration cannot be made. An instance of this kind of suit for the granting of an injunction only may be where a declaration has already been obtained. In such cases it might be said that asking for a declaration again has no meaning because the declaration is already there, and the only prayer, therefore, that could properly be asked for was a prayer for an Injunction. In the present case, as already stated, it is quite obvious that a prayer for a declaration could certainly have been added to the plaint, and that being so, this is a case in respect of which a relief could be obtained from the revenue Court, on the cause of action set up in the plaint.

11. That being so, we may now consider whether if a relief for a declaration had been asked for in the plaint, the suit would have been of the nature specified in the Fourth Schedule, that is, whether it would be covered by any of the Section 60, 61 or 63. Section 61 would clearly not apply to the case because that section only applies where the tenancy admittedly exists, because the words used are "during the continuance of a tenancy", and the declaration that is asked for is concerning the matters specified in Sub-section (2) of Section 55. These are matters concerning the class of tenancy, the area, the number, the boundaries of the plots, the rent payable and such other matters. Section 60 authorises a landholder to sue any person claiming to be a tenant of the holding for a declaration of the right of such person. In our opinion, this section would apply to a case like the present, because the plaintiffs as landholders are suing persons claiming to be tenants of a holding or holdings, and the prayer for a declaration would be that they have no such rights of tenancy.

According to the allegations contained in the plaint, the plaintiffs are landholders, and the defendants claim to be tenants, because they had taken steps to deposit 10 times of the annual rent, and attempted to obtain 'bhumidhari' rights in respect of the land in suit. They could not have deposited the rent and claimed 'bhumidhari' rights, if they were not setting themselves up as tenants of the holding. Section 63 is more specific and applies only to those cases where the land is claimed by the landholder as being his 'sir or khudkasht', and it is claimed by a tenant as his holding or as being under his cultivation. The use of the word "the" before 'landholder' suggests that the section applies only to those cases where the tenant sets himself up as the tenant of a particular landholder who claims the land to be his 'sir' and 'khudkasht'. In the present case, the defendants have denied the plaintiffs' ownership of the land, and it is doubtful whether this section would cover the present case. But, in our opinion, Section 60 clearly covers the case; and, therefore, the present suit is barred from the cognizance of a civil Court by Section 242 of the Act, inasmuch as it arises out of a cause of action in respect of which a relief for a declaration could be obtained from the revenue Court.

12. We may now consider some of the cases on the point decided by this Court. It is not necessary to go to the earlier cases on the point, and the first case that we propose to consider is reported in -- 'Mt. Ananti v. Chhannu', AIR 1930 All 193 (B). This is a Full Bench case, and it is laid down here 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 that jurisdiction, unless and until the allegations of fact contained therein have been gone into and found to be true. It was further held that where the plaintiff alleged himself to be a tenant, and the defendant to be a trespasser, the suit was entertainable by the civil Court; but, that, if the plaintiff tenant had alleged the defendant to be the landholder and, besides a claim for compensation and possession, also claimed an injunction, the suit would have substantially fallen under Section 99 of U. P. Act No. 3 of 1926. The joining of a relief for an injunction would make no difference and the suit would be exclusively cognizable by the revenue Court. The important point decided is the point just mentioned, and the case is an authority for the proposition that the adding of a prayer for an injunction would not oust the jurisdiction of the revenue Court.

13. In the case reported in -- 'Bageshar Misir v. Mahabir Shukul', AIR 1935 All 526 (C), it has been held that in a suit for profits the adding of a relief for joint possession of the land did not take the case out of the jurisdiction of the revenue Court. The peculiar feature of this case was that the plaintiff had himself stated in the plaint that he had obtained joint possession, and had nowhere stated that he had subsequently been dispossessed. On those facts, it is obvious that the relief for joint possession was added only for the purpose of ousting the jurisdiction of the revenue Court. It was, therefore, rightly ignored and the suit held to be cognizable only by the revenue Court.

14. The Full Bench case of -- 'D.N. Rege v. Kazi Muhammad Haider', AIR 1946 All 379 (D), was a case under Section 180, U. P. Tenancy Act, and it clearly lays down that the civil Court has no jurisdiction where a claim to a tenancy has been set up before the institution of the suit. In the present case, the claim to tenancy rights by the defendants was clearly set up when they applied for obtaining the 'bhumidhari sanads', and this claim was known to the plaintiffs before the institution of the suit.

15. In a subsequent single Judge case reported in -- 'Rati Ram v. Sri Krishna', AIR 1949 All 257 (E), a learned single Judge of this Court held that where the defendant's claim to a tenancy was based on the title of a third party, and that third party had, by a decree of Court, himself been held to have not a shadow of title, it could not be said that the defendants were claiming to be the tenants of the plots in suit. The learned Judge observed that the defendants were treated as mere trespassers, and a civil Court had jurisdiction to entertain the suit. The mere assertion in the plaint that the defendants were claiming as tenants, in the circumstances of that case, was held not to amount to an averment which would oust the jurisdiction of the civil Court. We respectfully agree with the learned Judge that such a statement in the plaint may not amount to an averment that the defendants were claiming to be tenants. But we find it difficult to agree with him, when he further holds, that the suit was cognizable by the civil Court. It is obvious that the defendant in that case was only claiming the rights of a tenant though from a third party, and was not setting up any proprietary title in himself. He was, therefore clearly claiming for himself the status of a tenant and not that of a proprietor; and, according to the F. B. decision in -- 'D.N. Rege's case (D)', the suit would be cognizable exclusively by the revenue Courts. We do not agree with him when he holds that the suit was cognizable by the civil Court. The actual point that we are considering at present did not arise in the single Judge case, and the case was cited by the learned counsel for the applicants as an authority for the proposition that a suit against a trespasser, with respect to agricultural lands, lay in the civil Courts. The case supports the contention of the learned counsel on this point, but, as stated above, we are of the opinion that this decision of the learned single Judge is opposed to the decision of the Full Bench in -- 'D.N. Rege's case (D)'.

16. The next case cited by the learned counsel for the applicants is also a single Judge case reported in -- 'Ishwar Din v. Mohammad Ishaq', AIR 1952 All 496 (F). In this case, it has been held that Section 63, U. P. Tenancy Act, applies only if the suit is for a declaration that the property in dispute constitutes the 'sir' and 'khudkasht' land of the plaintiff, and not to a suit for an injunction. It was further held that where the plaintiff 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 'khudkasht' holder, that the defendants were setting up title through a person who was a trespasser, and that the defendants had threatened to take forcible possession of the land, the suit was triable not by the revenue Court but by the civil Court, The learned single Judge followed the case of -- 'Rati Ram (E)', discussed above, and referred to certain other cases as well, including the Full Bench case of -- 'D.N. Rege (D)', which were all distinguished and held not applicable to the facts of the case before the learned single Judge. The learned Judge observed that Section 63 of the U. P. Tenancy Act was not applicable because the suit was not a suit for a declaration but was a suit for an injunction. Some of the points arising in this case were really covered by the earlier decision in -- 'Rati Ram's case (E)', and the learned single Judge was bound to follow that decision. In view of that decision, the learned single Judge probably did not think it necessary to consider the wordings of Section 242 of the Act; and some of the cases, we have mentioned above, also do not appear to have been brought to his notice.

17. The last case to which we may refer is the case reported in -- 'Zahid Ali v. Shahid Ali', AIR 1952 All 660 (G). In this case the suit was one for settlement of accounts and recovery of the plaintiff's share of profits in the property in suit, and a prayer for a perpetual injunction, restraining the defendant from looking after the management of the property was also added. It was admitted that a

claim for profits 'simpliciter' would be cognizable exclusively by the revenue Court, but the argument was that the suit was cognizable by the civil Court because of the additional prayer for the issue of a permanent injunction. This contention of the learned counsel was overruled, and it was held that the suit was exclusively cognizable by the revenue Court. The learned Judges observed:

> "There is no reason to think that, even after the omission of the word 'adequate' any question about 'insignificant' or 'substantial' relief arises. If the legislature had any such distinction in mind, it must have made it clear by using some other word in place of 'adequate'. On the other hand, we find that the legislature has now added the word 'any' in place of 'adequate', which makes the intention of the legislature perfectly clear."

We respectfully agree with the observations made above.

18. A resume of the authorities given above shows that the view that we have taken is supported by a majority of decisions of this Court, and the only cases that supported the applicants' contention were the two single Judge cases of -- 'Bati Ram (E)' and of -- 'Ishwar Din (F)', which do not appear to lay down correct law.

19. In our view, the decision of the Court below is correct, and we consequently dismiss this revision with costs.