

Zabar Singh vs Baldeo Prasad And Ors. on 21 February, 1952

Equivalent citations: AIR1952ALL922, AIR 1952 ALLAHABAD 922

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

1. This second appeal arises out of a suit for the cancellation of a deed of lease. The plaintiffs-respondents alleged that they were the chief tenants of certain agricultural plots and a sub-lease of those plots had been obtained by the defendants-appellant from them by fraud. They, therefore, brought this suit for the cancellation of the sub-lease. Both the lower Courts have held that the fraud alleged by the respondents has been proved and, therefore, the sub-lease is liable to be cancelled. The trial Court consequently decreed the suit and the lower appellate Court dismissed the defendant's appeal against that decree. In this second appeal the only question of law, that has been argued by the learned counsel for the appellant, is that the civil Courts had no jurisdiction to entertain the suit because some relief in respect of the cause of action alleged by the respondents could have been granted by the revenue Court to them under Section 60, U. P. Tenancy Act.

2. Section 60, U. P. Tenancy Act, gives the land-holder a right to bring a suit against any person claiming to be a tenant of a holding for a declaration of right of such person. The contention of the learned counsel for the appellant is that the sub-lease purported to grant tenancy rights in agricultural land to the appellant and the cancellation of the deed of lease will in effect, take away this right of tenancy of the defendant-appellant. The lower appellate Court, when dealing with this point, held that this was a case where the relief sought was the cancellation of a document on the ground of fraud and not a declaration of the right of tenancy and consequently the civil Court had jurisdiction to entertain the suit.

I do not think that any cogent reasons have been advanced by the learned counsel for the appellant which would induce me to disagree with the view taken by the lower appellate Court. There is no doubt that, if the deed of sub-lease is cancelled in the suit, the right of tenancy, which might be claimed by the defendant-appellant under it, would no longer be open to be claimed by him, but this fact cannot make the present suit a suit for a declaration that the defendant-appellant has no right as a sub-tenant. Learned counsel for the appellant referred me to a Division Bench decision of this Court in *Ram Sewak Lal v. Bashist*, 1947 ALL. L. J. 683 where it was held that in order to determine the true nature of the relief claimed in a suit, the pith and substance and not the form in which the relief may be couched has to be considered. With respect I may say that I entirely agree with the general proposition of law laid down by the Bench but it appears to me that even the application of this principle is of no assistance to the appellant. In that case, the plaintiff had instituted a suit claiming the following relief:

"It may be declared that the plaintiff along with defendants 7 to 9 are the occupancy tenants and that defendants 1 to 3 have no concern with the plots in dispute and that the fraudulent consent decree dated 15-9-1942, obtained on the alleged confession of the plaintiff is null and void and ineffectual against the plaintiff."

On an objection that the suit was cognizable by the revenue Court, this relief was amended by the plaintiff. After amendment of the relief, the plaintiff merely claimed a declaration that the consent decree passed by the revenue Court was void and ineffectual against him. The pleadings in the plaint of that suit were fully considered by this Court and, on a consideration of those pleadings, the view was that the pith and substance of the pleadings and the relief claimed really amounted to a relief for a declaration that the plaintiff was a tenant and was not merely for avoidance of the effect of the consent decree. The first point to be noticed is that the consent decree sought to be set aside was itself a declaratory decree declaring that the plaintiff was not the tenant of the land in suit. It was through that decree that the plaintiff's right of tenancy had been decided and the direct effect of declaring that decree void was to revive the right of tenancy claimed by the plaintiff. A second point is that, in the body of the plaint, the plaintiff had made allegations, indicating how he was the tenant of the land in suit and, in the first instance, when he framed a relief in the suit, he had clearly asked for a declaration of his title as a tenant. No such circumstance exists in the present suit. In this suit, the relief claimed is not for a declaration at all. The relief is for cancellation of a deed and not for a declaration that the deed is null and void. If a decree or a deed happens to be null and void, it can be ignored by all Courts of law after arriving at a finding to that effect and the Courts do not have to exercise the power of cancelling the deed or the decree. On the other hand, if the deed does not happen to be void but is only voidable at the option of a party, then the relief for cancellation of the deed can only be granted by a civil Court. Such relief cannot be granted by a revenue Court whose powers are limited by the provisions of the U. P. Tenancy Act. In that case, therefore, since the decree was sought to be declared void, even the revenue Court could have held it to be void and proceeded to grant other reliefs to the plaintiff of that suit.

In the present suit before me, the deed is sought to be cancelled on the ground of being voidable and unless a proper Court cancels the deed, the revenue Court could not ignore its effect and could not give a declaration as to the right of the appellant being or not being a tenant of the land in suit. The case before me is, therefore, one where the revenue Court could not have granted any relief at all unless and until some other competent Court had first cancelled the deed of sublease. In framing the suit, the plaintiffs nowhere indicated that they intended that the civil Court should grant any declaration that the defendant was not a sub-tenant of the land in suit. This case is, therefore, distinguishable from that case. In the present case, the relief, which has been sought, could only be granted by a civil Court and, in the absence of that relief having been granted, the revenue Court could not have granted any relief to the plaintiffs-respondents. The suit was, therefore, cognizable by the civil Court.

3. As a result, the appeal fails and is dismissed with costs.

4. Leave to appeal is granted.