

## **Nageshar Ram And Anr. vs Bansbahadur Singh And Anr. on 2 March, 1950**

**Equivalent citations: AIR1950ALL532, AIR 1950 ALLAHABAD 532**

### **JUDGMENT**

Agarwala, J.

1. This is a plaintiffs' appeal arising out of a suit (or three reliefs-- (a) for a declaration that the plots in suit (which are agricultural plots) be declared to be the joint family property of the plaintiffs and defendant 2' Chander Prasad, (b) that a lease dated 27th June 1942 executed by Chander Prasad in favour of defendant 1 Bans Bahadur Singh be cancelled and (c) that possession over the plots in suit may be awarded to the plaintiffs. Both the Courts below have held that the plots in suit were the joint family property of the plaintiffs and defendant 2, and therefore they have granted a declaration to that effect to the plaintiffs, but the other two reliefs have not been granted. The point in this appeal is whether the other two reliefs could be granted.

2. The plots in dispute are zamindari property. They were purchased in July 1934 by the plaintiffs in the name of Chander Prasad who was then a minor and is the son of Nageshwar Bam, plaintiff 1, plaintiff 2 being another son of plaintiff 1. Obviously, the purchase in the name of defendant 2 minor was for the benefit of the entire family and the name of Chander Prasad was a benami. The manager of the family is obviously plaintiff 1.

3. When Chander Prasad attained majority, he proceeded to execute a lease on 27th June 1942 in favour of Bans Bahadur Singh defendant 1, without the consent of his father and other members of the family. This lease was only for one year. On the expiry of the term of the lease, that is, on 6th July 1943 the plaintiffs brought the present suit for the reliefs stated above.

4. It having been found that the property in dispute was the joint family property, Chander Prasad had no power to execute the lease, he being a junior member of the family. The question is whether the civil Court can declare the lease null and void. In my opinion, it can. It will be observed that the Tenancy Act does not contain any provision for the cancellation of leases or for a declaration that a certain lease is null and void. What is contended for is that under Section 60, the plaintiffs could have maintained a suit in a revenue Court for a declaration that defendant 1 was not a tenant and that, further, since the plaintiffs are claiming possession also, they could have sued under Section 180, Tenancy Act for possession over the plots on the ground that the defendant was a person "taking or retaining possession of a plot or plots of land otherwise than in accordance with the provisions of the law for the time being in force and without the consent of the person entitled to admit him as tenant."

It may be conceded that the plaintiffs could have brought these two suits, but the question whether the defendant is a tenant or is not a tenant, or is a person holding the land otherwise than in accordance with the provisions of the law for the time being force, is a question that does not necessarily depend upon the validity of the lease. Cases can easily be imagined that, though the lease is invalid, a person in possession can take up the plea that he has been admitted to the occupation of the land by the person entitled to do so.

5. In *Tahad Ali Khan v. Israr Ullah*, 1938 A. W. R. H. C. 788 : 1938 A. L. J. 1110 : (A. I. R. (26) 1933 ALL, 121), a permanent lease had been granted by a certain cosharer and by the mother acting as a guardian of a minor cosharer. Though the perpetual lease was invalid, it was held that the defendant had been admitted to the occupation of the land as a tenant by the manager of the property and that, therefore, he had become a tenant and could not be ejected.

6. It may be noted that the head-note A at page 788 of the 1938 A. W. R. noted above, to the effect that:

" The civil Court has no jurisdiction to decide that the widow had no right to transfer any portion of the property of the minor and that the lease is invalid"

is not borne out by the judgment and is incorrect. In the judgment their Lordships merely stated:

" We have accordingly come to the conclusion that, although the perpetual lease executed in favour of the appellant is not binding on the plaintiff-respondent, the relationship of landlord and tenant has been established between the parties and that their rights and liabilities can be adjudicated upon by the revenue Court alone."

The rights and liabilities which can be adjudicated upon by the revenue Court alone are rights of the landlord and tenant. Their Lordships did not have in mind the rights under the lease which had been granted in that case and the claim to which had been given up by the tenant; vide last five lines of the first column at p. 790

7. Whenever, therefore, a person sues in a civil Court for the cancellation of a lease, the civil Court is not under the necessity of making a further enquiry whether the defendant is a tenant or has been admitted to the occupation of the and as such. To grant the relief of cancellation of the lease, the civil Court alone is the proper forum, In the present case, this relief should have been granted to the plaintiffs. This view is supported by the a decision of the Privy Council in *Rampal Singh v. Balbhaddar Singh* 25 ALL, 1: (29 I. A. 203 P. C.), and by decisions-of this Court in *Maula Dad Khan v. Radha Kant*, 1935 R. D. 239 : (A. I. R. (22) 1935 ALL. 629), *Aziz Fama v. Mukund Lal*, A. I. R. (19) 1932 ALL. 480 : (139 I. C. 166) and in *Banwari v. Ram Ratan*, 13 R. d. 396: (A.I.R. (16) 1929 ALL. 387:(119 I.C. 436). The case reported in *Duije Kunwar v. Baila Kunwar*, 1932 A. L. J. 521 : (A. I. R. (19) 1932 ALL, 460), is distinguishable on the facts, and the decision must be confined to those facts.

8. The further question whether the plaintiffs could be granted possession over the plots in suit in a civil Court is now concluded by a decision of a Full Bench of this Court in D. N. Rege v. Mohammad Haider, 1946 A. L. J. 369 : (A. I. R. (33) 1946 ALL. 379 F. B.). It was pointed out in that case that where the plaintiff sued a person treating him as a trespasser for a possession over certain agricultural plots, knowing fully well that the defendant claimed to hold the possession not as a proprietor, but as a tenant, the suit lay in the revenue Court under Section 180, U. P. Tenancy Act and not in a civil Court. In the present case, it is quite obvious that the plaintiffs knew that the defendant was claiming to be in possession not as a proprietor but as a tenant under the lease granted to him by Chander Prasad. The suit for possession, therefore, lay in the revenue Court.

9. I would, therefore, allow this appeal in part and decree the plaintiffs' suit for cancellation of the lease dated 27th June 1942 in addition to the declaration already granted to them by the Courts below. As the civil Court is unable to grant a decree for possession over the plots in dispute, the plaintiffs should seek that relief in the revenue Court.

10. The parties shall bear their own costs in all the Courts.

11. Leave to appeal under the Letters Patent is refused.