

Sheo Dayal And Anr. vs Ram Harakh And Anr. on 13 April, 1953

Equivalent citations: AIR1954ALL66, AIR 1954 ALLAHABAD 66

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This second appeal arises out of a suit for possession over certain tenancy plots.

2. The facts found by the lower appellate Court are that some of the plots in suit were originally the tenancy of Ram Padarath upto the year 1328 Fasli; that some time during 1328 Fasli Bam Padarath died so that, in 1329 Fasli, those plots were shown as being in the possession of his widow, Shrimati Maharaj Dei; that in 1331 Fasli Shrimati Maharaj Dei obtained a lease of all the plots in suit, which included the plots which had been shown in the name of Ram Padarath in 1328 Fasli, from the landlord and she was granted the rights of a statutory tenant; and that Shrimati Maharaj Dei died in 1945 and then a dispute arose as to who was entitled to succeed to the tenancy rights in those plots. The plaintiffs-appellants are the sons of the daughter of Ram Padarath and Shrimati Maharaj Dei whereas the respondents are the brother and the brother's son of Ram Padarath. The appellants claimed that, by virtue of the lease of 1331 Fasli, Shrimati Maharaj Dei had become a tenant of those plots in suit in her own rights and, consequently, under Section 37, U. P. Tenancy Act, which was applicable when Shrimati Maharaj Dei died, they were entitled to succeed to her tenancy. On behalf of the respondents the contention was that Shrimati Maharaj Dei had originally acquired tenancy rights in the plots in suit as a widow and consequently, on her death, succession would be governed by Sections 35 and 36, U. P. Tenancy Act, so that respondent 1, Ram Harakh, brother of Ram Padarath deceased, had a right to succeed, in preference to the daughter's sons. The lower appellate Court, following two decisions of the Board of Revenue, held that Shrimati Maharaj Dei succeeded to the tenancy rights in the plots in suit as a widow and the succession, was consequently governed by Sections 35 and 36, U. P. Tenancy Act. Consequently, the lower appellate Court decided the suit in favour of the respondents and dismissed the suit of the appellants.

3. Section 37, U. P. Tenancy Act has been made applicable only to such female tenants who are not mentioned in Section 34 or Section 36 of the Act so that it is a residuary section and, in order to apply this section, it is necessary to interpret Sections 34 and 36 of the Act. Section 34 is, in this case, not applicable at all and need not be mentioned. Section 36 is as follows :

"36 (1) When a female tenant, other than a tenant mentioned in Section 34, who, either before or after the commencement of this Act has inherited an interest in a holding as a widow, as a mother, as a step-mother, as a father's mother, or as a daughter dies or abandons such holding, or surrenders such holding or a part of such holding, or, in the case of a tenant inheriting as a widow or as a daughter, marries, sued holding or such part of such holding shall, notwithstanding anything in Section 45, devolve in accordance with the order of succession laid down to Section 35, on the heir of the last male tenant, other than a tenant who inherited as a father's father under the provisions of that section."

What has to be examined in this case is whether Shrimati Maharaj Dei can be held to have inherited an interest in the land in suit as a widow of Ram Padarath. In order to find out whether she succeeded to an interest in the land in suit as a widow, we have to go back to the law as it stood on the date when Ram Padarath died and the succession opened. Learned counsel for both parties are agreed that Ram Padarath died before the Avadh Rent (Amendment) Act (U. P. Act 4 of 1921) came into force so that the law then applicable was Avadh Rent Act of 1888. Under that Act, there was no provision for succession to tenancy or to interest in holdings of a tenant. The only provision granting a right to an heir was Section 48 of that Act which merely gave to the heir the rights (i) to retain occupation of the holding at the rent paid by the deceased statutory tenant for the unexpired portion of the period for which the deceased tenant might have held it without liability to enhancement of the rent or ejectment and (ii) to receive compensation under the provisions of that Act for improvements, if any, made on the holding by himself or by his predecessor-in-interest. There was an additional clause laying down that the heir of that tenant shall not be entitled to a renewal of the tenancy. It was under this provision that Shrimati Maharaj Dei, on the death of Ram Padarath continued in possession of some of the plots in suit, viz., those plots of which Ram Padarath was a tenant in 1328 Fasli.

There is no finding by the lower Courts and learned counsel for the parties have not drawn my attention to any evidence to show what was the unexpired portion of the period for which Ram Padarath, would have been entitled to continue in possession as a tenant. It was three years later in 1331 Fasli that Shrimati Maharaj Dei was given a fresh lease by the landlord and then she was given the right of a statutory tenant as defined in the Avadh Rent Act of 1886, as amended by U. P. Act 4 of 1921. It is clear that this lease cannot be construed as continuing her possession in the same right in which she had originally come into possession, on the death of Ram Padarath, of some of the plots in suit. It has been pointed out by learned counsel for the respondents that the lease granted to Shrimati Maharaj Dei in 1331 Fasli was either in respect of those very plots of which Ram Padarath had been a tenant or included other plots which were given in lieu of those from which Shrimati Maharaj Dei was dispossessed though she had come into occupation of those plots also on the death of Ram Padarath. Even though the lease was in respect of the same land or land granted in lieu of the land which had been held by Ram Padarath, it is also clear that this lease cannot be construed as a renewal of any rights, which Shrimati Maharaj Dei already had on the date of the lease, in the land as the heir of Ram Padarath.

In the capacity of the heir of Ram Padarath, she was only entitled to be in occupation of the land for a certain period which, as I have said above, it is not possible to determine in this case; but she was not a tenant at all. The law, as it applied when Ram Padarath died, granted no tenancy rights to Shrimati Maharaj Dei in the land of which Ram Padarath had been the tenant and the execution of the new lease was thus the conferment of new rights of tenancy on Shrimati Maharaj Dei. Renewal implies the continuance of pre-existing rights are not continued (sic) but entirely fresh rights are created. The new lease in 1331 Fasli, it appears, was permissible as the right of occupation of Shrimati Maharaj Dei as heir of Ram Padarath must have terminated due to the lapse of the period permissible under Section 48, Avadh Rent Act of 1886. There is no clear finding that that period had expired but the circumstances reasonably justify an inference that this lease was granted to her by the landlord at the time when she became liable to be ejected from the land. The landlord, at this stage, appears to have agreed to let the land continue in the cultivation of the family of Ram Padarath. He consequently, granted a fresh lease to Shrimati Maharaj Dei and granted her statutory rights for a period of ten years renewable after expiry of that period with liability to enhance the rate of rent.

This right of tenancy conferred by the landlord was acquired by Shrimati Maharaj Dei in her own right and not in the capacity of the widow of Ram Padarath with the result that, from the date of the execution of that lease, it must be held that her occupation as heir of Ram Padarath ceased and she started possession in the capacity of a statutory tenant under the lease which had been granted to her in her own right. In this view, on the day when Shrimati Maharaj Dei died, she was in possession by virtue of the lease granted to her in her own right in 1331 Pasli and not by virtue of any interest to which she might have succeeded on the death of Ram Padarath as his widow. Consequently, Section 36, U. P. Tenancy Act is not applicable to this case and the succession must be governed by Section 37 of the Act.

4. As a result, I allow the appeal with costs, set aside the decree passed by the lower appellate Court and decree the suit of the plaintiffs-appellants for possession by ejectment of the respondents. There was also a claim for damages but the amount of damages has not been determined by the lower Court and I do not consider that, in the circumstances of this case, it is necessary to have the damages ascertained and a decree in respect of damages also granted. The dismissal of the suit, so far as damages are concerned, shall stand.

5. Leave to appeal to a Division Bench is granted.