

Shankerpal Singh And Anr. vs Hari Shanker Singh And Ors. on 22 September, 1953

Equivalent citations: AIR1954ALL170, AIR 1954 ALLAHABAD 170

JUDGMENT

Randhir Singh, J.

1. These three appeals have been heard together. They arise out of three suits in which the parties were the same and the facts were also similar.
2. One Srimati Chaurasa Kunwar died on 1-11-1944 possessed of certain under-proprietary and occupancy holding plots. The plaintiffs claiming to be the nearest reversioners instituted three different suits, as the plots were situate in three different mohals, against the defendants on the allegations that the property had passed to the plaintiffs and the defendants had taken unlawful possession of the plots in collusion with the zamindars who were also impleaded as defendants in these suits. It was alleged on behalf of the plaintiffs that Srimati Chaurasa Kunwar had inherited the property as a limited heir from her son, Jagdamba Singh, who died issueless.
3. The main contesting defendants who are the appellants in this case contested the suits mainly on the ground that they had been holding the property in their own right and that the suit was not maintainable under Section 183, U. P. Tenancy Act. They further alleged that Srimati Chaurasa Kunwar had acquired full proprietary rights by adverse possession in the property to suit and that the defendants being her nephews, were entitled to succeed to her property on her death. Some of the defendants other than those who are appellants in the present appeals also raised a plea that the suit was barred by the provisions of Section 34, Sub-section (5), U. P. Land Revenue Act. It was also denied by the defendants that the plaintiffs were the nearest reversioners to the estate.
4. As a plea of proprietary possession in respect of under-proprietary plots was raised by the defendants, an issue was referred to the civil court on this point. The Munsif who tried the issue found that the plaintiffs were the nearest reversioners, that Srimati Chaurasa Kunwar had not acquired full proprietary rights in the property by adverse possession and that the plaintiffs were entitled to succeed to the property left by Srimati Chaurasa Kunwar. On receipt of this findings the revenue court proceeded to decide the issue on the question of jurisdiction. It came to the finding that the suit did not lie under Section 183, U. P. Tenancy Act as the defendants did not claim to be in possession of the property through the landlord but held it in their own right as heirs of Srimati Chaurasa Kunwar. The revenue court, therefore, dismissed the suit. The plaintiffs then went in appeal to the civil Judge who allowed the appeal and decreed the suits. The defendants 3 and 4 have now come up in second appeal.

5. The first point which has been urged on behalf of the appellants is that the plea that the suit was not maintainable in view of the provisions of Section 34(5), U. P. Land Revenue Act had been raised in these suits and no finding had been given by either of the two Courts below on this point. It has been urged that the plaintiffs did not make any report for mutation of their names on the death of Srimati Chaurasa Kunwar and they were thus not entitled to maintain any suit of any kind in the revenue court.

It appears from the written statement filed by Harpai Singh and from the joint written statement filed by defendants 6, 7, 9, & 11 to 14 that a plea of Section 34(5), U. P. Land Revenue Act was in fact raised. No issue, however, was framed on this point and it appears that this plea was not pressed in the trial Court. In the appellate Court also when this plea was raised, the learned Civil Judge rejected the plea on the ground that it had not been raised in the trial court and no issue was framed on this point by that Court. If the plea could have been decided only on a point of law, it may perhaps have been allowed to be raised in this Court, but the plea involves questions of fact on which no evidence has been led by either party. If the plea has been pressed in the trial Court the plaintiffs would have been in a position to lead evidence to show whether or not a report had been made for mutation of their names. It appears, therefore, that the plea was virtually abandoned and no evidence was led on this point.

6. Moreover the defendants 3 and 4 who are appellants in the present appeals did not raise this plea and it is, therefore, not open to them to raise this plea for the first time in second appeal. The defendants who had raised the plea did not come up in second appeal. I am unable, therefore, to entertain this plea at this stage and it is not necessary to discuss whether the suit would be barred in view of Section 34(5), U. P. Land Revenue Act.

7. The second point which has been urged on behalf of the appellants is that the suit was not maintainable under Section 183, U. P. Tenancy Act and as such should have been thrown out by the revenue court. If the assertion made on behalf of the appellants would have been held to be well-founded, the result of it would have been that the suit should have gone to the civil court.

Section 291, U. P. Tenancy Act provides that if in any suit an objection on the ground of jurisdiction is taken in the court of first instance and if the necessary materials for a proper determination of the suit are before the Court it shall be competent to dispose of the appeal. In the present case even if the suit had gone to the civil court, an appeal would lie to the District Judge and the District Judge was, therefore, competent to dispose of the appeal even if there was some substance in the objection raised about jurisdiction by the defendants. The learned Civil Judge who heard the appeal pointed out that the material on the record was sufficient for the disposal of the suit and has, therefore, given his decision on merits. In view of the provisions of Section 291, U. P. Tenancy Act, it is immaterial whether the suit was within the cognizance of the revenue court or not. The argument advanced on this point has, therefore, no force.

8. The last point which has been canvassed on behalf of the appellants is that the finding of the Court below that the plaintiffs were the nearest reversioners to the estate of Srimati Chaurasa Kunwar is not based on sufficient evidence on the record. It appears from the judgments of the

lower appellate Court and of the Munsif who decided the issue about proprietary rights that it had been proved that the plaintiffs were the nearest reversioners. There was the evidence of Hari Shankar a witness to prove that all those who were nearer to the deceased last male holder of the property as compared to the plaintiffs were dead. He also deposed that he had seen some of the persons mentioned by him in the pedigree and had heard about others from his father who was dead. The lower appellate Court also concurred with this finding of the trial Court and came to the conclusion that it had been found that the plaintiffs were the nearest reversioners to the estate of Srimati Chaurasa Kunwar. This is a finding of fact which is binding on this Court. Even apart from this the evidence appears to be satisfactory on the point.

9. No other point has been raised in arguments on behalf of the appellants.

10. As a result all the three appeals fail and are dismissed with costs to the respondents.