

Badri Prasad vs Sheo Balak on 8 August, 1950

Equivalent citations: AIR1951ALL358, AIR 1951 ALLAHABAD 358

JUDGMENT

Kidwai, J.

1. Sheo Balak instituted a suit out of which this appeal arises for partition of a riyaya grove situated on plot No. 1235 in Mahal Chandika Prasad, Pargana Pachchrawan, District Rae Bareli. He claimed that he was entitled to a half share in the grove and that the defendant had cut away two babul trees valued at Rs. 30 in November 1943 which had infringed his rights. He further alleged that he was compelled to institute the suit for partition because Badri Prasad appellant had refused to agree to a private partition.

2. Badri Prasad pleaded that he was the sole owner of the grove in suit and that the civil Court had no jurisdiction. The trial Court, viz., Munsif Dalmau, framed eight issues of which the first was framed to determine whether the plaintiff was a grove holder of half the plot in suit and the sixth was framed to determine the question whether the civil Court had jurisdiction. The Munsif referred the first issue for a finding to the revenue Court. The revenue Court found that the plaintiff was a sharer to the extent of a half share in the grove in suit. On receipt of this finding the learned Munsif proceeded to decide the remaining issue and on the issue of jurisdiction he found that the civil Court had jurisdiction to entertain the suit. The learned Munsif accordingly declared that the plaintiff had a half share in the grove in suit subject to certain limitations which he specified in his order. He further directed that the plaintiff would be entitled to actual partition on an application being made after three months for the preparation of a final decree.

3. The defendant appealed and the plaintiff filed cross objections. The learned Civil Judge of Rae Bareli dismissed the appeal and allowed the cross-objections. The defendant has now come up in second appeal and his learned Advocate has raised two contentions, first that the civil Court had no jurisdiction and secondly, that even if a suit did lie in the civil Court, the issue relating to the determination of the question whether the plaintiff was a grove-holder or not should not have been referred to the revenue Court.

4. On the question of jurisdiction, the learned Advocate for the appellant relied upon the provisions of Section 206, Clause (f), Tenancy Act, which directs that the provisions of, among other sections, Section 49 shall apply to grove-holders as they apply to tenants. Section 49 relates to partition of holdings. The provision relating to Section 49 contained in Section 206, Clause (f) did not exist at the time of the institution of the suit or of the filing of the appeal in the lower Appellate Court or even of the filing of the appeal in this Court. It was added by Act X [10] of 1947. Accordingly, at the time when the suit was filed, as well as at the time when the appeal was filed in this Court it was the civil Court that had jurisdiction to entertain the suit. The decision of the lower Courts is, therefore,

not bad for want of jurisdiction.

5. With regard to the question whether any issue ought to have referred to the revenue Court, it is contended that no question of tenant right arises in this suit and that consequently Section 288 is not applicable. It is true that the word "tenant" as defined in Section 3, U P. Tenancy Act does not include a grove-holder, but under Section 206, Clause (f), the provisions of Sections. 59 to 64, Tenancy Act apply to grove holders as they apply to tenants. Sections 59 to 64 relate to suits for a declaration of tenancy either by a person claiming to be a tenant or by the land, lord. Suits of the nature covered by Sections 59 to 61 are to be tried by Assistant Collectors of the first class--vide, Schedule IV, Group B, Tenancy Act. According to the provisions of Section 242, Tenancy Act such suits were, therefore, cognizable exclusively by the revenue Court and for the purposes of such suits grove-holders are to be treated as on the same footing as tenants. Having regard to these provisions when the word "tenant right" is used in Section 288 it must be held that reference is made to such right as lies, within the exclusive jurisdiction of the revenue Court for determination. Having regard to the provisions of Section 206 and Section 59, the determination of the question whether a person is a grove-holder or not lies within the exclusive jurisdiction of the revenue Court. Accordingly, when a question is raised in a suit pending in a civil Court, the issue must be framed and referred to the revenue Court for determination. The reference made by the learned Munsif to the revenue Court was accordingly not illegal. That being so, the civil Court was justified in proceeding on the basis of the finding arrived at by the revenue Court.

6. The result, therefore, is that the appeal fails and is dismissed with costs.