

Pheru Ahir And Anr. vs Mangru Gandaria And Ors. on 25 January, 1950

Equivalent citations: AIR1950ALL449, AIR 1950 ALLAHABAD 449

JUDGMENT

Seth, J.

1. This is an appeal against an order of the Civil Judge of Azamgarh allowing an appeal and directing the plaint to be returned for presentation to the proper Court, by which the learned Judge means the revenue Court. He has found that the civil Court has no jurisdiction to entertain this suit.

2. The suit was brought by the plaintiffs alleging that they were tenants of the plots in dispute and that the defendants have forcibly taken possession of the same and were occupying them as trespassers. On these allegations the plaintiffs claimed possession of the plots and Rs. 40 by way of damages.

3. The lower appellate Court has expressed the view that the plaintiffs could get the relief asked for by means of a suit in the revenue Court which they could have brought either under Section 59, 180 or 182, U. P. Tenancy Act. It is to be noted that the suit was brought before Sections 180 and 183 were amended by Act X [10] of 1947. The allegations contained in the plaint are not covered by any of these three sections. Section 59 contemplates a suit against a landholder by a tenant for a declaration of his tenancy rights. It is no doubt true that any person claiming through the landholder may be impleaded as a defendant to such a suit, but the relief claimed is, primarily, a relief against the landholder. In the present case, the plaintiffs do not find themselves aggrieved by any action of the landholder. They do not stand in need of any declaration against the landholder and, therefore, the suit cannot be treated to be a suit under Section 59. U. P. Tenancy Act.

4. Section 180 contemplates a suit by a person who is entitled to admit the defendant to tenancy. In the present case, the plaintiff who is a tenant himself is not entitled to admit another person to the tenancy of the land. He may admit him to a sub-tenancy only if the finding recorded by the revenue Court is ignored that he is himself a sub-tenant of the land. After the amendment of Section 180, it is now possible for a tenant who can admit another person as a sub-tenant to eject a trespasser from his tenancy land. That was, however, not possible before the amendment was made. The lower appellate Court was, therefore, not right in holding that the plaintiffs could have brought a suit under Section 180, U. P. Tenancy Act to obtain the relief claimed in this suit.

5. In my opinion, Section 183, U. P. Tenancy Act also does not cover the present case. Section 183 contemplates a suit either against a landholder or against a person who is allowed to take or retain possession with the consent of the landholder or against a person admitted to or allowed to retain

possession of the holding by such landholder. The learned Judge of the lower appellate Court has himself observed that the jurisdiction of the Court should be determined in accordance with the allegations made in the plaint. In the present case there appears to be no allegation in the plaint to the effect that the defendants have been admitted or allowed to retain possession of the land in dispute by the landholder. That being the position, the jurisdiction of the civil Court does not appear to have been ousted by the provisions of Section 242, U. P. Tenancy Act.

6. This appeal is, therefore, allowed, the Order of the lower appellate Court is set aside and the case is remanded to the lower appellate Court with the direction that the appeal should be re-admitted to its original number and should be disposed of on merits after deciding all other points that arose in the appeal. The appellants shall have their costs of this appeal. Other costs will be in the discretion of the lower appellate Court.