

Baur And Ors. vs Deo Kali And Ors. on 5 October, 1950

Equivalent citations: AIR1951ALL610, AIR 1951 ALLAHABAD 610

JUDGMENT

Agarwala, J.

1. This is the defendants' appeal arising out of a suit for ejectment and damages. The suit was instituted by the plaintiff Raja Ram, predecessor-in-interest of the present respondents 1 to 3, under Section 180, U. P. Tenancy Act.

2. The plots in suit, 23 in number were alleged to belong to the plaintiff as an under-proprietor and the defendants were alleged to have taken possession of the same without the plaintiff's consent and without any right. The plaintiff claimed Rs. 200 as damages. Defendant 1 contested the suit upon the ground that he was a tenant of the plots having obtained a lease from the superior proprietor Raj Kurnari Kaniz Baqar and that the plaintiff was not an under-proprietor at all. The issue about the proprietary right raised by the defendant was referred to the Civil Court. The Civil Court decided that the plaintiff was an under-proprietor. On receipt of this finding the trial Court decreed the suit but awarded no damages. The defendants appealed to the lower appellate Court. The appeal was dismissed. In the lower appellate Court, for the first time, the defendants raised a plea of jurisdiction. The Court below rejected that plea. The defendants also applied in that Court for permission to file a sale certificate and a copy of a khewat to show that the plaintiff had, after the suit was instituted, ceased to have the proprietary interest claimed by him, as the same had been sold at an auction sale. The lower appellate Court rejected this application on the ground that fresh evidence could only be allowed in appeal if the Court required it in order to enable it to pronounce judgment or for any other substantial cause, and that because the Court did not require the documents to enable it to pronounce judgment and there was no other substantial cause, the document could not be accepted. In this two points have been urged before us.

3. It has been contended that the revenue Court had no jurisdiction to entertain the suit. The argument is that in the plaint the plaintiff merely alleged that the defendants were trespassers. He did not allege that the defendants claimed tenancy rights. It was urged that the civil Court has jurisdiction to entertain a suit for ejectment against a trespasser where it is not alleged that the defendant is claiming tenancy rights. In our opinion this contention is not sound.

4. No doubt the plaintiff merely alleged that the defendants were trespassers. That fact, however, does not oust the jurisdiction of the revenue Court. The reason is that Section 180, U. P. Tenancy Act, contemplates a suit against a person "taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force,"

or in other words against a trespasser. The mere fact that the plaintiff is against trespassers, therefore, does not advance the appellants' case. It has been held in a Full Bench decision in *D.N. Rege v. Muhammad Haider*, A. I. R. (33) 1946 ALL. 379 : (I. L. R. 1946 ALL. 692 F.B.) that the civil Court had jurisdiction to try a suit against a trespasser where the defendant claimed to hold the land as a proprietor and the revenue Court had jurisdiction to entertain the suit if the defendant claimed to hold the land as a tenant. It would be better if the plaintiff specifies in the plaint the capacity in which the defendant alleges to hold the land. Where this is not specified and the defendant alleges that he is a tenant, the suit filed in the revenue Court is clearly filed in the right Court. If, however, the defendant alleges that he is holding the land as a proprietor and if the Court comes to the conclusion that the plaintiff knew before he instituted the suit that the defendant was claiming to hold in that capacity, and in spite of this knowledge he filed the suit in the revenue Court, the plaint is liable to be returned for presentation to the proper Court. In the present case the defendants alleged that they were tenants of the land having obtained a lease from the superior proprietor.

5. It was contended that though the defendants claimed to hold the land as tenants and not as proprietors themselves, they yet were holding the land in denial of the plaintiffs proprietary right and as such the suit was maintainable only in the civil Court and reliance has been placed in support of this contention upon a single Judge decision of this Court in *Rati Ram v. Shri Krishna*, A. I. R. (36) 1949 ALL. 257 : (1948 O. W. N. 376). In that case the defendant claimed to hold the land as a tenant of a third party, who had not a shadow of title to the land. It was held by Mushtaq Ahmad that the suit was cognisable by the civil Court. The facts of that case are clearly distinguishable from the facts of the present case. Here the defendants claim to hold the land under a lease granted not by a person who has no shadow of title, but by a superior proprietor whose superior proprietary title is not denied by the plaintiff. In our opinion, the case is governed by the propositions laid down in the Full Bench case above referred to.

6. Moreover the matter is concluded by the provisions of Section 290 of the U. P. Tenancy Act. The plea of jurisdiction was not raised in the trial Court. An appeal would have lain to the District Judge if the suit had been instituted in the civil Court. As such the provisions of Section 290 fully come into play and the District Judge, in spite of the fact that the suit might have been instituted in the wrong Court, was empowered to decide it on the merits.

7. It has next been contended that the lower appellate Court should have allowed the appellants to produce fresh evidence which they wanted to produce. The appellants did not file any affidavit in support of their application in the lower appellate Court--at least we have not been able to find any and the learned counsel has not been able to show us that any such affidavit was filed. In the circumstances, the appellants failed to adduce reasons for the delay in filing the documents. They did not explain why they were not able to file them at an earlier stage of the case, during the pendency of the suit in the trial Court. As such the lower appellate Court was fully justified in refusing to admit fresh evidence at the appellate stage.

8. No other point was argued. There is no force in this appeal. It is dismissed with costs.

Kidwai, J.

9. I agree.