

Baba Mahadeo Das vs Satyandra Kumar And Ors. on 15 September, 1952

Equivalent citations: AIR1953ALL85, AIR 1953 ALLAHABAD 85

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Agarwala, J.

1. This appeal has been referred to this Pull Bench on account of a supposed conflict between two Full Benches D.N. Rege v. Kazi Muhammad Haider, 1949 ALL, L. 3, 369 (F. B.) and Mahadeo Prasad v. Jokhan Ram, A. I. R. 1947 oudh 133 (F. b.), and for an authoritative decision on the point involved in the case. The facts briefly are as follows.

2. The appellant is one of the plaintiffs in the suit which has given rise to this appeal. He along with other plaintiffs, who have been arrayed as pro forma respondents, filed a suit in the Court of the Civil Judge, Banaras, for recovery of possession over four plots of land which they claimed to be grove-land. According to the plaintiff's the original grove-holder of the plots was one Bhawani Mali who sold them to one Birja Mali in the year 1849. Birja Mali made a usufructuary mortgage of the plots to Jagat Earn Udasi by a deed dated 18-5-1851. Mahadeo Das, a successor-in-interest of Jagat Ram Udasi, treating the plots as his own property, usufructuarily mortgaged them to one Gajadhar Sonar in the year 1907. It will be noted that by this time the sixty years' period of limitation for redeeming the original mortgage of 1851 had not expired, but the original mortgagors do not seem to have ever claimed the property. In 1942 the plaintiffs, who are successors-in-interest of Mahadeo Das, brought a suit for redemption of the usufructuary mortgage executed by Mahadeo Das against Gajadhar, the mortgagee, and also impleaded the defendants-respondents as defendants to the suit on the ground that they were in possession of the plots without any right. In this suit the defence of the defendants-respondents was that they were not trespassers but were the tenants of the land, having succeeded to the interest of Raja Moti Chand who had purchased the tenancy rights of the original tenant Birja Mali through various sale-deeds. The civil Court decreed the suit for redemption against Gajadhar Sonar but exempted the defendants, respondents from the suit on the ground that they were not proper parties in a suit for redemption against the mortgagee, and that a separate suit might be filed against them if the plaintiffs be so advised.

The plaintiffs, then, in 1946, brought the suit, which has given rise to this appeal, in the Court of the Civil Judge for possession against the defendants-respondents, as already stated. In the plaint it was clearly mentioned that the land was grove-land, and that the defendants claimed to be the tenants of the land through various sale, deeds. It was also alleged that the defendants had not acquired any rights in the plots by virtue of the aforesaid sale-deeds. The defence to the suit, in the main, was that the defendants-respondents were tenants of the plots in dispute and were also permanent lessees, and that the Court had no jurisdiction to hear the suit. An application was made by the defendants to the Court below praying that the issue of tenancy right be referred to the revenue Court. This application was rejected. Ultimately, however, the Court below came to the conclusion that the suit was not triable by the civil Court but was triable by the revenue Court, and ordered the return of the plaint for presentation to the proper Court. Against this order the present appeal was filed in this Court by one of the plaintiffs, and the question which was canvassed before the Bench, before whom the case came up for hearing in the first instance, was whether the civil Court had jurisdiction to entertain the suit. Before us another question has been raised--whether in view of the Zamindari Abolition Act read with the Zemindari Abolition and Land Reforms Order, 1952, vide Notification No. 5569/1-A-548-1952, dated 26-8-1952, the suit should remain in the civil Court and should be tried by that Court.

3. As pointed out by us before, the plaintiff stated in the plaint that the land was grove-land, that the defendants claimed to be the tenants of the land, having acquired the rights of the original grove-holder or tenant. The case, therefore, was one in which a claim was made by a grove-holder that he had been dispossessed by a person who claimed to hold the land through the landholder. The section of the U. P. Tenancy Act which is applicable to such a suit is Section 183 read with Section 206 (e). Under Section 183 a tenant ejected from or prevented from obtaining possession of his holding or any part thereof, otherwise than in accordance with the provisions of the law for the time being in force by--(a) his land-holder or any person claiming as landholder to have a right to eject him, or (b) any person admitted to or allowed to retain possession of the holding by such landholder or person, whether as tenant or otherwise, may sue the person so ejecting him or keeping him out of possession (i) for possession of the holding; (ii) for compensation for wrongful dispossession etc. Although Section 183 in terms applies only to tenants, (and grove-holders are not tenants except for certain purposes), yet Section 206 (e), which applies to grove-holders, makes S- 183 applicable to grove-holders as well. Again, Section 183 applies when the disputed property is a holding. Holding is defined as a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenure. Land includes grove-land. Therefore, a holding includes both a grove-holder's holding as well as a tenant's holding. By reason of the allegations in the plaint that the defendants were claiming as tenants the suit was, therefore, clearly cognizable by the revenue Court when it was instituted in the Court below.

4. Both the Full Bench cases referred to at the threshold of this judgment are distinguishable from the facts of the present case. In the case reported in *D. N. Rege v. Muhammad Haidar*, 1946 ALL. L. J. 369 (F. B.), the proprietor of a plot of land sued for recovery of possession of agricultural land against a person whom he alleged to be a trespasser. The question was whether the suit was cognizable by the revenue Court under Section 180, U. P. Tenancy Act or by the civil Court. It was held that if the plaintiff's allegations in the plaint showed that the defendant claimed to be in

possession of the land in dispute as a tenant, his suit was cognizable by the revenue Court under Section 180, but that if the plaintiff's allegation showed that the defendant claimed the land as proprietor then the suit was cognizable by the civil Court. Section 180 applies to 'land' to which some body could be admitted as a tenant and which land becomes the hereditary tenancy of the trespasser if he was claiming as tenant, or which becomes khudkasht land if the defendant was a co-sharer and was claiming the land as his khudkasht. Although 'land' as defined in the U. P. Tenancy Act includes grove-land, yet the definition is subject to the exception "unless the contrary appears." The contrary appears from the context in which the word 'land' is used in Section 180. A grove-holder is not a tenant under the Tenancy Act except for certain purposes, and a trespasser of grove-land cannot become a hereditary tenant or a khudkasht-holder. It follows that the word 'land' used in Section 180 is confined to agricultural land. Section 180, therefore, does not apply to grove-land, and the full Bench case D. N. Rege v. Muhammad Haidar, 1946 ALL. L. R. 369 (F.B.), does not decide anything about the forum in which a suit for possession of grove land must be instituted.

5. The other Full Bench case, Mahadeo Prasad v. Jokhan Ram, A. I. R. 1947 oudh 133 (F.B.), does deal with a suit for possession of grove-land against a trespasser. But that was a suit in which the plaintiff did not allege that the defendant claimed to be a tenant of the landholder. It is obvious that in the suit before the Fall Bench there was no allegation which could bring the case under Section 188, U. P. Tenancy Act. In the present case, as we have already observed, the allegations in the plaint clearly bring the case under Section. 183, U. P. Tenancy Act.

6. This leads us to a consideration of the second point raised before us.

7. Under Section 19, Zamindari Abolition Act all land, held or deemed to have been held, on the date immediately preceding the date of vesting by any person as (VIII) a "grove-holder" shall..... be deemed to be settled by the State Government with such person, who shall, subject to the provisions of this Act, be entitled to take or retain possession as a sirdar thereof. Grove-holders, therefore, with the exception of certain purposes, have become sirdars under the Aboilition of Zaimindari Act. Section 209 deals with ejectment of persons occupying land without title. It reads as follows :

"A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and

(a) where the land forms part of the holding of a bhumidhar, sirdar or asami, without the consent of such bhumidhar, sirdar or asami,

(b) where the land doss not form part of the holding of a bhumidhar, sirdar or asami without the consent of the Gaon Sabha, shall be liable to ejectment on the suit of the bhumidhar, sirdar, asami or Gaon Sabha, as the case may be, and shall also be liable to pay damages."

The claim of the plaintiff would, it would seem, fall under Section 209 because the plaintiff having become a sirdar under the Act was, according to him, deprived of possession of his holding by a

person "who has taken or is retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force." tinder Schedule II of the Act as originally enacted a suit by a sirdar under Section 209 was to be instituted in the revenue Court, the Court of the Assistant Collector 1st Class to be precise, vide item 8 of the said schedule. Thus even under the Abolition of Zamindari and Land Reforms Act the present suit would have lain in the revenue Court. But it is urged that the Zamindari Abolition and Land Reforms Order mentioned already has altered the position.

8. Paragraph 5 of the Order provides that during the period of one year from the commencement of this order, the figure 206 shall be substituted for the figure 209 in serial No. 8 in Schedule II The result of this amendment is that for a period of one year beginning from 1-7-1952, which is the date of the commencement of the Order, suits by sirdars and others under Section 209, Abolition of Zamindari Act (U. P. Act No. 1 of 1951) would lie not in the revenue Court but in the civil Court, because when Section 206 is substituted in place of Section 209 in serial No. 8, no other serial number in the Schedule II refers to Section 209, with the result that such suits are not cognizable by the revenue Courts at all, and are consequently cognizable by the civil Courts alone. Paragraph 5 of the Order, however, has to be read along with para. 2 of the Order.

9. Paragraph 2 of the Order provides that except as expressly provided in the U. P. Zamindari Abolition and Land Reforms Act, 1950, or under the U. P. Zamindari Abolition and Land Reforms Rules, 1952, every suit, appeal or legal proceedings in respect of any right, privilege, obligation or liability acquired, accrued or incurred under or in pursuance of the U. P. Land Revenue Act, 1901, or the U. P. Tenancy Act, 1939, shall (a) where pending on 30-6-1952 in any revenue or civil Court, be continued in such Court ; and (b) where not so pending, may be instituted or commenced in the Court in which it would, but for the enactment of the U. P. Zamindari and Land Reforms Act, 1950, have been instituted or commenced, and every such suit, appeal or legal proceedings shall be heard, inquired into and decided under and in accordance with the provisions of the U. P. Land Revenue Act, 1901, and the U. P. Tenancy Act, 1939. It is clear that para. 2 of the Order applies to all causes of action which had accrued before the coming into force of the U. P. Zamindari Abolition and Land Reforms Act, 1950, under the U. P. Land Revenue Act, 1901 and the U. P. Tenancy Act, 1939. These two Acts were repealed by the U. P. Zamindari Abolition and Land Reforms Act. The effect of para. 2 is that proceedings relating to causes of action which had accrued under the U. P. Land Revenue Act, 1901 or under U. P. Tenancy Act, 1939, prior to their repeal, shall be instituted or continued in the Courts in which they would have been instituted or continued. Sub-paragraph (a) deals with pending suits, appeals or other legal proceedings. Sub-paragraph (b) deals with causes of action about which no suit, appeal or other legal proceedings had been instituted or commenced. In the present case the cause of action, which is the basis of the plaintiff's claim, accrued under the U. P. Tenancy Act before the Act was repealed by the U. P. Zamindari Abolition and Land Reforms Act. So far as the present appeal is concerned, it falls under sub-para, (a) of para. 2 of the Order, because it was pending on 30-7-1952. The appeal will, therefore, have to be decided by this Court in accordance with the provisions of the U. P. Tenancy Act. We have already held that if regard be had to the provisions of the U. P. Tenancy Act, under Section 183 the suit should have been instituted in the revenue Court. Thus the order of the Civil Judge, Banaras, directing the return of the plaint to be presented to the proper Court was correct. When the plaintiff presents the plaint to the revenue

Court his case will fall under sub-para, (b). The order of 26-8 1952, therefore, does not at all affect the position. We, therefore, hold that the plaintiff's suit was cognizable by the revenue Court and the order of the lower Court was correct.

10. The appeal is, therefore, dismissed with costs.