

Allahabad High Court

Mt. Sukhdei And Ors. vs B. Himanshudhar Singh And Ors. on 7 January, 1949

Equivalent citations: AIR 1949 All 609

Author: Kidwai

JUDGMENT Kidwai, J.

1. This appeal arises out of a suit instituted by Babu Himanshudhar Singh, taluqdar of Shahmau Tekari, for recovery of arrears of under-proprietary rent from the appellants and respondents 2 to 5. The appellants are the mortgagors of the under-proprietary khata in respect of which the arrears are claimed and respondents 2 to 5 who are in possession of the whole khata on behalf of the appellants are usufructuary mortgagees. The plaintiff is the superior proprietor.

2. The defence was that a certain sum, namely Rs. 200 had been paid towards the arrears claimed and that remission had been granted on account of frost which should also be deducted from the amount of rent claimed in the suit. The suit was filed as long ago as 1937 but it has been considerably delayed owing to the fact that there were two remands to ascertain whether there had been remissions on account of frost or not. Finally the Civil Judge of Partabgarh held that although there had been remissions, the appellants were not entitled to any because they were under-proprietors and they could only get a remission on account of a calamity under the procedure laid down in Section 101, Land Revenue Act, which had not been resorted to in the present case. He accordingly decreed the suit for the arrears after deducting the amount actually paid but without allowing anything for remissions.

3. It was also contended before him that, owing to the fact that the U.P. Tenancy Act had come into force while the suit was still pending the rights of the parties should have been determined under the new Act and, therefore, the liabilities of each of the defendants should have been separately determined by reason of Section 234, U.P. Tenancy Act. This plea was not accepted by the learned Civil Judge on the ground that the suit had been initially decided by the Assistant Collector before the enforcement of the U.P. Tenancy Act.

4. The appellants have come up in appeal and they challenge the decision of the learned Civil Judge in respect of both these matters. With regard to the question of whether the Avadh Rent Act applied or the U.P. Tenancy Act was to be considered as the law according to which the case was to be decided, Section 296, U.P. Tenancy Act, does not leave the matter in doubt. It is provided by that section that all suits which are pending at the commencement of the U.P. Tenancy Act shall be decided in accordance with the corresponding provision of the Act. At the time when the U.P. Tenancy Act came into force the case was still pending in the trial Court since its previous decree had been set aside and the case had been remanded. It is, therefore, incorrect to say that the suit had been decided, because the decree of the trial Court no longer stood and the case was proceeding. Section 296, therefore, applied to the case which should have been determined according to the provisions of the new Act. This will, however not affect the decision of the present appeal because it has been held in *Shakoor Ahmad Khan v. Faiyaz Hasan* A.I.R. (31) 1944 Oudh 312, that the provisions of Section 234, U.P. Tenancy Act, do not apply to the case of under-proprietors in Avadh but they apply only to the case of sub-proprietors in the Agra province. Thus there would be no

question of the separate apportionment of liabilities in the present case.

5. With regard to the other point, Section 151, U.P. Tenancy Act corresponds to Section 19, Avadh Rent Act and the principles laid down in both are exactly the same. It is provided by both the sections that remissions due to a calamity may be granted only with the previous sanction of the Collector. It is further provided that when such a remission has been granted a consequential remission of revenue is to follow. This clearly indicates that sections 19 and 151 relate to cases in which there have been no remissions of revenue prior to the claim by the under-proprietor for the grant of remission of rent. In the present case, it is agreed that revenue had already been remitted before the suit was instituted and the claim made by the under-proprietor for remission of rent. Section 19, Avadh Rent Act and Section 151, U.P. Tenancy Act are not applicable to this case which is governed by Section 101, U.P. Land Revenue Act. It has been laid down in *Raja Sir Mohammad Ejaz Rasool Khan v. Mata Din* 1938 C.A. 901, that in order to enable an under-proprietor to claim a reduction in the under-proprietary rent, the procedure laid down in Section 101, Land Revenue Act must be followed. This also appears from a perusal of Section 19, Avadh Rent Act and Section 101, Land Revenue Act. In the present case the procedure laid down in Section 101, Land Revenue Act has not been followed and there has been no order by the Collector either general or special for the reduction of the rent of under-proprietors. The under-proprietors were, therefore, not entitled to the remission which they claimed.

6. The decision of the lower appellate Court must, therefore, be upheld and this appeal is dismissed with costs.