

Allahabad High Court

Rahmat And Ors. vs Ambika Prasad And Ors. on 13 September, 1935

Equivalent citations: AIR 1936 All 13

Author: Bajpai

JUDGMENT Bajpai, J.

1. This is a defendants appeal. The plaintiffs brought a suit in the Civil Court for recovery of possession of two plots, Nos. 426 and 427, by dispossession of the defendants and for Rs. 25 as damages. The plaintiffs alleged that they had been in possession of these plots for a number of years and that they lie within the zamindari share of Ambika Prasad Bansi, plaintiffs Nos. 1 and 2. The plaintiffs went on to say that the defendants in collusion with and at the instigation of Pirthi Singh and Mt. Dhanraji Kunwar uprooted the crops sown by the plaintiffs and had forcibly and wrongfully taken possession of the land in suit. The finding of the lower appellate Court is that the plaintiffs' version appears to be correct, that the plaintiff's were in possession for a considerable time and that the plaintiffs were dispossessed by the defendants who damaged the plaintiffs' sowings. Upon these findings the plaintiffs were given a decree for possession and for Rs. 7 as damages which the lower appellate Court held to be the value of the crops uprooted by the defendants.

2. A plea, however, was taken by the defendants that the suit was not cognizable by the Civil Court but should have lain in the revenue Court. In the Court below and before me the argument in the beginning was that the plaintiffs ought to have filed the suit under Section 99, Agra Tenancy Act, Local Act 3 of 1926. Section 99, Agra Tenancy Act, is obviously inapplicable. There the plaintiff must allege that he is a tenant and that his ejectment has been either by the landholder or by a person claiming through a landholder. In the present case the plaintiffs did not allege that they were tenants of the plots. They alleged that they were the zamindars of the plots and that they were in possession as co-sharers; it was only by way of precaution that they had taken leases from other co-sharers. It would, therefore appear that 8.99 has no application Later Mr. Shiva Prasad Sinha on behalf of the appellants argued that the plaintiffs might have brought a suit under-S. 44, Tenancy Act. Now Section 44, Tenancy-Act undoubtedly contemplates a suit by a landholder against a trespasser, but; it would be necessary for the plaintiffs to allege and to prove that the defendants have taken possession of the' plots of land without the consent of the land-holder. The allegation in the plaint is that the defendants have taken possession of the land at the instigation of J and in collusion with two of the co-sharers. It would not be possible for the plaintiffs, therefore, to obtain adequate relief from the revenue Court, because they would not be able to bring their case within the four corners of Section 44, Tenancy Act. No other provision to bring the suit in the revenue Court was brought to my notice under which-it was possible for the plaintiffs to obtain proper relief. The judgment of the Court below, therefore, is correct and I dismiss this appeal with costs. Leave to file an appeal by way of Letters Patent is refused.