

Allahabad High Court

M. Abdullah Khan vs Kanhaiya And Ors. on 15 July, 1929

Equivalent citations: AIR 1929 All 869

JUDGMENT

1. The plaintiff of the Court of first instance is the appellant before us. He brought the suit out of which this appeal has arisen on the allegation that he had let out the plots detailed in the plaint to defendant 1, that defendant 1 was ejected through the revenue Court from those plots, but with his help the two other defendants who were his son and nephew, occupied the lands. The plaintiff accordingly sued for recovery of possession.

2. Defendants 2 and 3 did not contest the suit. Defendant 1 alone appeared. He said that he was a cosharer in the village and therefore he was not liable to be ejected under Section 44, Agra Tenancy Act 1926, under which section the plaintiff purported to institute the suit.

3. The Court of first instance held that the defendant were trespassers in respect of certain plots but were cosharers in two khewats, viz-, Nos. 50 and 51. In the result, the learned Assistant Collector decreed the suit in respect of lands situated in khewats other than Nos. 50 and 51 and dismissed the suit in respect of lands which are situated in khewats 50 and 51.

4. There was an appeal by the plaintiff and his appeal was dismissed.

5. In this Court the plaintiff contends that his suit should have been decreed in respect to the lands situated in khewats 50 and 51. He also contends that he should have been allowed a larger amount of compensation than has been awarded to him with respect to lands for which he got a decree.

6. In this Court the question has been debated whether Section 44, Agra Tenancy Act 1926, applies to the facts of this case or not. It has been found that the plaintiff was a lambardar. He as such lambardar granted a lease to defendant 1 of lands comprised in khewats 50 and 51. Defendant 1, the tenant, who held under the lambardar, was ejected by the lambardar through the revenue Court. The question then is whether some of the cosharers of khewats 50 and 51 could in the teeth of the lambardar's right to let out the lands, take possession of the lands and say that because they were cosharers in those lands, they were entitled to remain in possession.

7. On the face of it, the contention of defendant 1 seems to be unsound. The learned Counsel for the respondents has urged that as between lambardar and cosharer, the cosharer has as much right to occupy land after the tenant has been ejected as the lambardar himself. He takes his stand on the well-known Privy Council case of *Watson & Go, v. Ramchund Dutt* [1891] 18 Cal. 10. The very principle decided by their Lordships of the Privy Council would go against Mr. Asthana's contention. The person who has actually ejected the tenant in due course of law and has taken delivery of possession is entitled to be in possession of those lands and the more so if he happens to be the lambardar. Another cosharer should not be allowed to take possession of those lands either by stealth or by force. The mere fact that at the moment of taking possession by the cosharer, the lambardar was not in physical possession would not remove the lambardar's possession.

8. Coming to the language of Section 44, Agra Tenancy Act, we find that a person who is in possession without the consent of the landholder is liable to ejectment. A landholder, under the definition given in the Act: see Section 3, Clause (6), is the person who is entitled to recover the rent or in other words is the man who is entitled to let the land out. The person who has ejected the tenant and has taken possession through the Court is the person who is entitled to continue in possession of it. The possession of the defendant-respondent is in the teeth of the landholders' possession and we are of opinion that the respondents were liable to be ejected even from the lands comprising khewats 50 and 51.

9. We note that in the grounds of appeal filed by the plaintiff-appellant, instead of describing the Nos. 50 and 51 as khewats the appellant has described them as plots. We also note that the Courts below have not stated specifically what are the plots which are comprised in khewats 50 and 51. We take it that at the time of execution the matter will be cleared up.

10. The second point relates to the question of damages. The damages allowed by the Courts below were one year's rent. The matter was in the discretion of the Court below and we need not interfere. As regards the damages to which the plaintiff is entitled for his success in this Court, we assess them at Rs. 19-15-6 having regard to the fact that the Court below has awarded one year's rent, and this amount will make up the entire rent for one year, namely Rs. 75.

11. There is a cross-objection on behalf of the respondents. On the principle on which we have decided this appeal, the cross-objection fails and it is hereby dismissed with costs.