

(1955) 08 AHC CK 0001
In the Allahabad High Court
Case No : Civil Revision No. 617 of 1950

Anand Singh and Others

APPELLANT

Vs

Mst. Kumari and Others

RESPONDENT

Date of Decision : 04-08-1955

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 180, 242

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 4(2)(v)

Citation : (1955) 25 AWR 526

Hon'ble Judges : V. Bhargava, J

Bench : Single Bench

Advocate : Kanhaiya Lal Misra and Surendra Narain Singh, for the Appellant;
V.K.S. Chaudhary, for the Respondent

Judgement

V. Bhargava, J.—This is a revision against an order passed by the learned District Judge remanding a suit for trial to the Munsif after upsetting the order of the learned Munsif directing return of the plaint for presentation to the proper court on the ground that the learned Munsif had no jurisdiction to entertain the suit. When this revision was heard, a preliminary point was raised by Learned Counsel for the opposite parties that, under Sub-section (3) of Section 290 of the U.P. Tenancy Act, this revision did not lie in this Court. This preliminary objection has no force in view of a Division Bench decision of this Court in Kashi Kahar v. Asharfi Singh 1938 A.W.R. (H.C.) 522 where Section 269 of the Agra Tenancy Act, 1926, was interpreted, the language of Sub-section (3) of which was identical with that of Sub-section (3) of Section 290 of the U.P. Tenancy Act. On behalf of the applicants Learned Counsel urged that whatever may have been the position initially, now the U.P. Zamindari Abolition and Land Reforms Act with its rules has come into force and, under Rule 4 of those rules, this revision as well as the suit, out of which this revision arises, must be abated. Learned Counsel for the opposite parties urged that the suit and the revision could not abate as Rule 4 did not apply to this suit. Under Clause (v) of Sub- Rule (2) of Rule 4 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952, suits, applications

and proceedings including appeals, references and revisions u/s 180 of the U.P. Tenancy Act, 1939, or of similar nature pending in a civil court, except where the Plaintiff is a tenant or where the land was the sir, khudkasht or grove of an intermediary and in which rights have not accrued to the Defendant u/s 16 or any other section of the U.P. Zamindari Abolition and Land Reforms Act, 1950, have to be stayed. Under Sub-rule (1) of Rule 5, such suits have to be abated by the court. The question is whether this particular suit is covered by the language of Clause (v) of Sub-rule (2) of Rule 4. It was contended by Learned Counsel for the applicants that this was a suit which rightly fell u/s 180 of the U.P. Tenancy Act, 1939. The suit was brought by a co-sharer for the cancellation of a lease which had been granted by another co-sharer, the latter having alleged that she was the sole proprietor in possession of the land. All other co-sharers were joined as Defendants. The lessees was also joined as Defendants and there was a prayer for possession against the co-sharer who had granted the lease and against the lessees. It is not, therefore, necessary for me to go into the question whether the suit of this nature does or does not fall within the language of Section 180 of the U.P. Tenancy Act. There can be no doubt that this was, at least, a suit similar in nature to a suit u/s 180 of the U.P. Tenancy Act. The suit was filed by the Plaintiffs claiming proprietary rights in the land against adverse possession by another co-sharer and by the lessees of that co-sharer. Under Sections 180 and 242 of the U.P. Tenancy Act, as amended by the U.P. Tenancy (Amendment) Act (U.P. Act X of 1947), a suit would lie in the revenue court even if any relief on the cause of action can be granted to the Plaintiff u/s 180. The cause of action in this case was only one, viz. the grant of lease challenged by the Plaintiffs by which one co-sharer gave rights to other persons, ignoring the rights of the Plaintiffs. It is true that the relief of cancellation could not be granted by the revenue court but the relief for possession on that very cause of action could be granted. The suit would, therefore, be a suit which appears to be covered by Section 180 of the U.P. Tenancy Act read with Section 242 of that Act. Even if this be not strictly so, there can be no doubt that that is a suit of similar nature. The word "similar" has to be kept in view as having a meaning different from the word "same". All that is necessary for Rules 4 and 5 U.P. Zamindari Abolition and Land Reforms Rules to apply is that the suit in the civil court should be similar to a suit in the revenue court u/s 180 of the U.P. Tenancy Act. Even if the suit be similar in nature, those rules apply and, as a result, the suit as well as the revision have to be abated. Learned Counsel for the applicants urged that he could easily give up his relief for possession and claim other reliefs based on cancellation and, for this purpose, the suit should be allowed to be proceeded with by the trial court. So far as this is concerned, the remedy of the Plaintiff-opposite-parties lies in bringing a fresh suit for the relief which they desire under Sub-rule (5) of Rule 5 of the U.P. Zamindari Abolition and Land Reforms Rules read with Rule 6 of these rules.

2. In these circumstances, I direct that this revision as well as the suit in the trial court which was remanded for trial by the lower appellate court shall be abated.

Since this revision has been decided on the basis of a law which has come into force subsequent to the filing of the revision, I direct parties to bear their own costs of this revision.