
(1940) 01 AHC CK 0026
In the Allahabad High Court

Asharfi Singh

APPELLANT

Vs

Chandrika Prasad Kuari

RESPONDENT

Date of Decision : 19-01-1940

Acts Referred:

Agra Tenancy Act, 1926 — Section 269
Specific Relief Act, 1877 — Section 54(k)

Citation : AIR 1940 All 389 : (1940) 10 AWR 248

Final Decision : Disposed Off

Judgement

1. The questions of law that arise for decision in the present appeal are: (1) Whether a landholder is entitled to a mandatory injunction restraining a fixed-rate tenant from doing any act or omission detrimental to the land in his holding or inconsistent with the purpose for which it was let; and (2) Whether such a suit, if maintainable, is cognizable by the Civil or by the Revenue Court? There is no longer any dispute about the facts which have given rise to these questions. The facts are as follows: B. Asharfi Singh, plaintiff-appellant, is the proprietor of plot No. 2519 which was the fixed-rate tenancy of one Sarju. This plot is now included within the municipal limits of Benares. On Sarju's death the plot was inherited by his widow Mt. Ganeshi who sold the same to Shreemati Rajmata Chandrika Prasad Kunwari, defendant-respondent, on 22nd December 1916. The defendant, with a view to build a temple, laid foundation which has come to the plinth. The suit giving rise to the present appeal was then filed by B. Asharfi Singh for the following reliefs:

(a) A decree may be passed and the defendant may be ordered to demolish the chabutra and building constructed on plot No. 2519 and to restore the said land, specified below, to its original condition within the time fixed by the Court. If she fails to do so, the building constructed by her may be demolished at her cost through the Amin of the Court and the said land may be restored to its original condition laid at Rs. 2400.

(b) A perpetual injunction may be issued to the defendant restraining her from

constructing on the said land, specified below, any temple or place of worship or building against the provisions of Section 3, Clause 11, Act 3(Tenancy Act) of 1926 laid at Rs. 100.

2. The defendant contested the suit inter alia on the ground that she had the right to make the constructions complained of and that, in any case, the suit was not cognizable by the Civil Court. These contentions of the defendant were overruled by the trial Court and the plaintiff's suit was decreed. But on appeal by the defendant the lower Appellate Court held that a landholder is not entitled to any relief against a fixed-rate tenant on the ground that the tenant has done an act or omission detrimental to the land in his holding or inconsistent with the purpose for which it was let. It accordingly held that a suit like the present was not maintainable either in the Civil or in the Revenue Court. On the question of jurisdiction raised by the defendant it held that, irrespective of the question whether the suit was cognizable by the Civil or the Revenue Court, it was in view of the provisions of Section 269, Agra Tenancy Act (3 of 1926), bound to entertain the appeal. In the result, in view of its finding that the suit was not maintainable, it allowed the appeal of the defendant and dismissed the plaintiff's suit. The plaintiff has come up in appeal to this Court and it is contended on his behalf that the decision of the trial Court was correct and ought to be restored. In our judgment this contention is well founded and ought to prevail.

3. When the present case engaged the attention of the Courts below the questions under consideration were not covered by any authority. Both the Courts below wrote remarkably good judgments and gave reasons in support of the conclusion arrived at by them. But since the decision by the lower Appellate Court, and during the pendency of the appeal in this Court, the points that arise for decision in the present appeal were decided by a Division Bench of this Court in *Kashi Kahar Vs. B. Asharfi Singh*, In that case Asharfi Singh, who is the appellant before us, was the plaintiff and had brought a suit against another fixed-rate tenant for identical reliefs. The defendant contested that suit on the ground that the Civil Court had no jurisdiction. The Munsif accepted this plea and directed the plaint to be returned for presentation to the Revenue Court. On appeal from the order of the Munsif the Appellate Court held that the Civil Court had jurisdiction and the suit was therefore remanded for disposal on merits. After the remand the Munsif decreed removal of the constructions and granted mandatory injunction restraining the defendant from doing any act inconsistent with the purpose for which the holding was let. The defendant appealed to the District Judge, but his appeal was dismissed. The defendant then appealed to the High Court and contended that the Civil Court had no jurisdiction to entertain the suit. This contention was given effect to by this Court and it was held that the suit was maintainable only in the Revenue Court. It was further held by this Court that "the suit for ejectment u/s 82 or for injunction u/s 85(3) would lie in the Revenue Court." With all respect we are unable to agree with this decision. In our judgment a landholder is entitled to a mandatory injunction of the nature prayed for in the present suit against a fixed-rate tenant, and the suit is

cognizable not by the Revenue but by the Civil Court.

4. The Tenancy Act recognizes different classes of tenants with varying rights and privileges (S. 10). Unlike expropriatory, occupancy, statutory and other classes of tenants, permanent tenure-holders and fixed rate tenants have a transferable interest in their holding. Nevertheless, the landholder retains his proprietary interest in the holdings of permanent tenure-holders and fixed-rate tenants. Section 12, Agra Tenancy Act, (3 of 1926) defines "fixed-rate tenants" as follows:

(1) When any land in a district or portion of a district which is permanently settled has been held by a tenant from the time of the permanent settlement at the same rate of rent, such tenant shall have a right of occupancy at that rate.

(2) Such tenant shall be called a fixed-rate tenant.

5. It is clear from this definition that all that a fixed-rate tenant is entitled to is a right of occupancy in his holding and that the rent payable by him is not liable to enhancement. All the same the landholder is entitled to realize the rent of the holding and, apart from any statutory provision to the contrary, is entitled to have this right protected by Courts of law. It was held by a Full Bench of this Court in *Tulsi Ram v. Gurdial Singh* (1910) 33 All 111, that a fixed rate tenancy is carved out of the landholder's interest in the land to which it relates and a fixed rate tenant has no absolute interest in it, and that if the tenancy comes to an end, it necessarily goes back to the estate, which it was carved out of and lapses to the landholder. It is manifest from this decision that the proprietary right in a fixed-rate holding continues to vest in the landholder and any act of the tenant which constitutes an invasion of such right must therefore constitute a wrong. A fixed-rate tenant who puts his holding to a use which is inconsistent with the purpose for which the holding was let may thereby jeopardise the right of the landholder to realize the rent of the holding as and when it falls due and such an act would therefore constitute an invasion of the proprietary right of the landholder. Ordinarily, there ought to be a remedy for every wrong. It therefore follows that a landholder must be entitled to relief from the Civil or the Revenue Court as against a fixed rate tenant when the latter does some act that is calculated to prejudicially affect the proprietary right of the landholder entitling him to realize the rent of the holding.

6. In the present case it has been found by both the Courts below that the plot in dispute was originally let for agricultural purposes. The defendant-respondent now proposes to build a temple on the plot and is thus proposing to do an act which is inconsistent with the purpose for which the plot was let. This act of the defendant is in contravention of the original contract by which the plot was let out and the landholder must therefore have the right to have the original contract respected and acted upon unless there is some law disentitling him to do so. To this effect is the decision of the Calcutta High Court in *Lal Sahoo v. Deo Narain Singh* (1878) 3 Cal 781. In that case it was held that

the statutory right of occupancy under Bengal Act 8 of 1869 cannot be extended

so as to make it include complete dominion over the land, subject only to the payment of a rent liable to enhancement.

7. It was further held in that case that notwithstanding the right of occupancy vested in the tenant the landlord is entitled to insist that the land shall be used for purposes for which it was granted and that the Court will not sanction a complete change in the mode of enjoyment. Similarly, relief was granted to the landholder by their Lordships of the Judicial Committee in *Bejoy Singh Dudhoria v. Surendra Narayan Singh* AIR(1928) PC 234 and the tenant was prevented from doing an act inconsistent with the purpose for which the land was let out to him. The same conclusion is deducible from illus. (k) to Section 54, Specific Relief Act. The illustration is as follows:

A lets certain arable land to B for purposes of husbandry but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to radicate. A may sue for injunction to restrain B from sowing the lands in contravention of the implied contract to use them in a husband like manner.

8. It follows from what has been stated above that in the present case the plaintiff must have some remedy against the defendant. But it is contended on behalf of the defendant-respondent that the Tenancy Act contains provisions that disentitle the plaintiff to any relief. Reference is first made to Section 109 of the Act which provides that "a permanent tenure-holder or a fixed-rate tenant may make any improvement." It is argued that the construction of a temple is an improvement and therefore the defendant is entitled to build the temple. This contention proceeds upon a total disregard of the definition of "improvement" contained in the Act. It is provided by Section 3(11) that

"improvement" means, with reference to a tenant's holding, any work which adds materially to the letting value of the holding, which is suitable to the holding and consistent with the purpose for which it was let....

9. Surely the building of a temple is not consistent with agricultural purposes for which the plot in suit was let. The construction of the proposed temple cannot therefore constitute an "improvement" within the meaning of the Act and Section 109 is therefore of no avail to the defendant. Reliance was then placed on Sections 84 and 85 of the Act. The relevant portion of Section 84 is as follows:

(1) A tenant, not being a permanent tenure-holder or a fixed-rate tenant, shall be liable to ejectment from his holding on the suit of the landholder-

(a) On the ground of any act or omission detrimental to the land in that holding, or inconsistent with the purpose for which it was let.

10. Section 85 runs as follows:

(1) A decree for ejectment u/s 84 may direct the ejectment of the tenant either

from the holding or from such portion thereof as the Court, having regard to all the circumstances of the case, may direct.

(2) Such decree may further direct that if the tenant repairs the damage, or pay such compensation as the Court thinks fit within one month from the date of the decree, or such further time as the Court may, for reasons to be recorded, allow the decree shall not be executed except in respect of costs.

(3) Notwithstanding anything contained in this Section, a landholder may, in addition to, or in lieu of suing for ejectment, sue (a) for compensation, or (b) for an injunction with or without compensation, or (c) for the repair of the damage or waste, with or without compensation.

11. It is argued that a fixed-rate tenancy is the creation of a statute and it is to that statute that we must look for determining the rights and liabilities of the landholder and fixed-rate tenant. It is then contended that as Section 84(1)(a) exempts a fixed-rate tenant from the liability to ejectment for doing an act inconsistent with the purpose for which the holding was let, the Legislature must be deemed to have conceded to the fixed-rate tenant an unrestricted licence to put his holding to any use he likes. As regards Sub-clause (3) of Section 85 it is argued that sub-clause has no application to fixed-rate tenants and therefore a remedy by way of injunction is not available to a landholder as against such tenants. It may straight-way be conceded that Section 85(3) has no application to fixed-rate tenants. It must further be admitted that the remedy by way of ejectment is not available to a landholder as against a fixed-rate tenant who does any act inconsistent with the purpose for which the holding was let. This is by virtue of Section 84 read with Section 77 of the Act. Section 77 lays down that "no tenant shall be ejected otherwise than in accordance with the provisions of this Act."

12. It follows from this Section that the provisions in the Act as regards ejectment are exhaustive and a suit for ejectment against a tenant can lie only if permitted by the Act. There is however no provision corresponding to Section 77 barring suits for injunction or for compensation against a fixed-rate tenant. In other words, it has not been provided by the Act that no suit for compensation or for injunction shall be brought against a tenant otherwise than in accordance with the provisions of the Act. The provisions of the Act as regards such suits are not, therefore exhaustive and cannot override the general law which entitles a person to remedy for the wrong done to him. The conclusion is therefore irresistible that a landholder can sue a fixed-rate tenant for compensation or for an injunction if the latter does some act inconsistent with the purpose for which the holding was let. Such a suit is not barred by any provision of the Tenancy Act, nor is by that Act cognizable by the Revenue Court. A suit for compensation or for an injunction as against a fixed-rate tenant must therefore in view of the provisions of Section 9, Civil P.C., lie in the Civil Court.

13. For the reasons given above we are unable to agree with the decision in

Kashi Kahar Vs. B. Asharfi Singh, that the remedy of a landholder in the circumstances of the present case, is by a suit in the Revenue Court, or that a landholder can sue such a tenant for ejectment in that Court. Reference was made in that case to Section 34(1), Section 82(1), Section 85(3) and Section 37 to show that a remedy by way of ejectment is available to a landholder in the circumstances of the present case. Section 34(1) enacts that transfers in contravention of the Act will be void, and Section 82(1) provides that if a tenant transfers his holding or any portion thereof contrary to Section 34(1), he and the transferee shall be liable to ejectment. These Sections obviously can have no application to a fixed-rate tenant, as such a tenant is given the right of transfer by the Act. Section 85(3) is also inapplicable to a fixed-rate tenant as it is to be read with Section 84. That this is so is manifest from the words "in addition to, or in lieu of suing for ejectment" used in the opening portion of Section 85(3). Section 37 similarly, in our judgment, does not apply to the case of a transfer of a portion of his holding by a fixed-rate tenant. That Section provides about the division of a holding. The division can be only between co-tenants and a transfer of a portion of the holding by a fixed-rate tenant in favour of a stranger is not division of the holding as between co-tenants. To hold otherwise would in effect be to make the right of transfer vested in a fixed-rate tenant subject to the provisions of Section 37 and for this there is no warrant in the Act. From what we have said above it follows that the rights of the case were with the plaintiff and not with the defendant. Accordingly we allow this appeal, set aside the decree of the lower Appellate Court and restore the decree of the trial Court with costs in all Courts.