

(1965) 02 AHC CK 0039
In the Allahabad High Court
Case No : Second Appeal No. 1472 of 1959

Bankey Singh

APPELLANT

Vs

Dharam Deo Singh and after him Ram Sabad Singh and
Another

RESPONDENT

Date of Decision : 22-02-1965

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 134, 331

Citation : (1965) 35 AWR 474

Hon'ble Judges : S.N. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Singh, J.—This a Defendant's appeal in a suit for perpetual injunction restraining the Defendant from interfering with the peaceful possession of the Plaintiff over the plots in suit in the alternative prayer for delivery of possession was also made.

2. The Plaintiff's case in brief was that prior to the abolition of zamindari the second Defendant Mst. Phulesara was the occupancy tenant of the plots in suit. She deposited ten times of the rent and became Bhumidhar of the plots in suit. She executed a sate deed in favour of the Plaintiff on March 10, 1954 and put the Plaintiff in possession over the plots in suit. The Plaintiff alleged that on the basis of wrong entries made in favour of Defendant No. 1 he was interfering with the peaceful possession of the Plaintiff, hence the suit.

3. The Defendants Bankey Singh and Mst. Phulesara contested the suit, inter alia on the grounds that Mst. Phulesara did not execute any sale deed in favour of the Plaintiff; that the sale deed was without consideration and that Mst. Phulesara was not legally competent to sell the tenancy land. It was also alleged that she had surrendered the holding in favour of the zamindar Defendant No. 1 (Bankey Singh) who had entered into possession prior to the abolition of zamindari and the land had become his khudkasht. The bar of limitation was also pleaded.

4. The trial court accepted the title of the Plaintiff but held that the Plaintiff was not in possession over the land in suit. It gave a categorical finding that on the evidence on record Defendant's possession was established, as such he decreed the suit of the plain-tiff for possession as against the Defendants.

5. The Defendants preferred an appeal against the above decision and the learned I Additional Civil Judge, Azamgarh, affirmed both the findings of the trial court and maintained the decree of that court.

6. In this appeal before me the learned Counsel for the Appellant has made the following sub-missions:

(1) that Smt. Phulesara had obtained a bhumidhari Sanad on April 6, 1954 and the sale in favour of the Plaintiff had been executed on March 10, 1954, as such the sale was void because till then she had not acquired trans-ferable interest in the property in suit; and

(2) that on the facts found by the two courts below the civil court erroneously granted the relief of possession which was not within the jurisdiction of the civil court.

7. So far as the first submission is concerned I have already held in Abdul Latif v. Abdul Hakim (1) (1965 AWR 455) that on a grant of declaration of Bhumidhari u/s 137 of the U.P. Zamindari Abolition and Land Reforms Act the person getting such declaration is deemed to be a Bhumidhar from the date of the deposit of ten times the revenue by virtue of Section 134 of the Act. It is not disputed before me that such a deposit had been made before the execution of the sale deed. In this view of the matter the first submission of the learned Counsel has no force. The sale deed having been executed after the deposit of ten times the revenue could not be challenged on the ground of non transferability.

8. So far as the second submission is concerned although it had not been 9. The statement of facts given above would show that the Plaintiff sought two reliefs in the instant case; (1) that on the declaration of his possession he may be granted the relief of injuction, and (2) a relief of recovery of possession. It is not disputed that if the suit was merely a suit for recovery of possession such a suit was not cognizable by the civil Court, because this suit was instituted after May 1956 when a suit for recovery of possession u/s 209 of the U.P. Zamindari Abolition and Land Reforms Act could be filed in the Revenue Court alone in view of Sections 209 and 331 of the said Act, and if it was a suit merely for injuction it was only cognizable by civil court. In this case the Plaintiff sought the relief of injuction and in the alternative, for possession. The question that arises for consideration in this appeal is that "if on the findings of fact recorded by the civil court it comes to the conclusion that the relief of injuction could not be granted in the circumstances of the case could it grant the relief of possession or not"?

10. After having heard the learned Counsel for the Appellant I was of opinion that this appeal should be allowed. I called upon the learned Counsel for the

Respondent Sri. G.N. Verma and heard him at great length on the question of jurisdiction. The learned Counsel made the following submissions:

(1) that in the instant case on the allegation in the plaint the civil court had jurisdiction and in a doubtful case the Plaintiff has a right to file such a suit in the civil court;

(2) that when one of the relief claimed is cognizable by the civil court it is competent to grant other relief also although the same are not cognizable by it; and

(3) that the finding of fact about possession was not a proper finding and was liable to review by this Court.

11. Taking up the last submission of the learned Counsel I have no hesitation in overruling the same for in my view the trial court had given a clear and categorical finding that on the evidence on record it was abundantly clear that the Plaintiff was not in possession on the date of suit and this finding of the trial court was confirmed in appeal by the learned Civil Judge. When a finding of fact of the trial court is affirmed in appeal it is not necessary for the first appellate court to notice in detail all the evidence on the point. If after having applied its mind to the facts of the case it affirms the decision of the trial court this is enough. Moreover, in this case the learned Civil Judge considered the revenue extract from 1363 F. to 1365 F. on the record and having accepted them to be good evidence of possession confirmed the finding of the learned Munsif. No exception can be taken to such a finding and this finding of the lower appellate court is binding in second appeal.

12. I shall now deal with the first two submissions made by the learned Counsel. It is not correct to say that Plaintiff has a right to file a suit in the civil court when he is doubtful about proving his possession. If he is in doubt about his own possession, in my opinion, the right course for him is to go to the court which could grant him the relief of possession. If he files a suit in the civil court he takes a risk. For as soon as the civil court comes to the conclusion that the Plaintiff is not in possession the civil court will find itself helpless to grant the relief prayed for. This Court has consistently held that it is the pith and substance of the relief claimed that matters and if the real intention of the Plaintiff is to obtain possession the civil court will not have jurisdiction to entertain the suit merely because a relief of injunction has been added. In my opinion as soon as the Plaintiff in such a case fails to prove his possession his suit would fail for the reason that he will not be entitled to the relief of injunction because of his not being in possession on the date of suit and he will be refused possession on the ground that the relief of possession was not within the cognizance of the civil court. A Plaintiff cannot give either to civil court or Revenue Court jurisdiction by making false allegations in his plaint, vide *D.N. Raje v. Mohd. Haider* (2) 1946 A.W.R. 403. This disposes of the first submission of the learned Counsel.

13. Now coming to the second sub-mission the learned Counsel supported

Sukhdeo and Anr. v. Basdeo and Ors. (3) 1935 A.W.R 581, Angnu v. Mahabir (4) 1954 AWR 513, Khaderu Ram Teli v. Ram Karan Ahir (5) 1961 AWR 639 and Himmat Singh v. Channoo Lal (6) 1964 A.W.R. 283.

14. There are two series of decisions of this Court. One series are those which included the decisions cited by the learned Counsel which took the view that if one of the reliefs is cognizable by the civil court then the civil court is competent to grant other reliefs as well. The other series of cases are *Latu v. Rani Maha Laxmi Bai and Anr.* (7) 1941 A.L.J. 713, *Man Pal v. Birja and Parichat* (8) 1951 A.L.J. 265 and *Nageshar Ram and another v. Bansbahadur Singh and Anr.* (9) 1952 R.D. 313. This series of cases have taken the view that in a case where a part of the relief claimed is cognizable by the civil court and the other part not cognizable by that court in such circumstances the civil court would grant the relief over which it has jurisdiction and would refuse the relief which is beyond its jurisdiction or would allow the party concerned to make proper amendment to the plaint. But in case the amendment is not made the civil court would dismiss the suit in respect of the relief which is not within the jurisdiction of the Civil Court. I am in respectful agreement with the view expressed in the later series mentioned above.

15. The present case is covered by neither of the two series of the cases mentioned above. It is one thing that when the civil court comes to the conclusion that it can grant the principal relief which is cognizable by the civil court and then grant the consequential relief thereof. But it is entirely different when the civil court finds that the principal relief itself which could be granted by the civil court is not grantable in the circumstances of a particular case. In such circumstance it cannot grant the relief which is beyond its jurisdiction. It is only when one of the reliefs is found to be within the cognizance of the civil court that the civil court could grant the other reliefs not within its jurisdiction. The learned Counsel for the Respondent submitted that the facts of the present case are very similar to the facts of the case reported in the case of *Himmat Singh v. Channoo Lal* (4). I do not think that this submission of the learned Counsel is borne out by the decision of the case referred to by him. In this reported case *Gangeshwar Prasad, J.*, differentiated a case which was filed before the amendment of Section 331 U.P. Zamindari Abolition and Land Reforms Act by the amending Act of 38 of 1961 with the one which would be filed after the said amendment. In his Lordship's view the cases that had interpreted Section 242 of the U.P. Tenancy Act would apply only to the cases which would be filed after the amendment of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act and not to the cases which had been instituted before the said amendment and to the facts of that case it was held that the civil court had jurisdiction to decide that particular case.

16. Subsequent to the above decision another case came before the same Hon'ble Judge and the facts of that case were identically similar to the facts of the present case and his Lordship took the same view as I have taken in this

case. It was held in that case as follows:

As the Plaintiff was obviously not entitled to the relief of injunction the suit became one for possession alone and cognizance of such a suit became barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, even as it stood before the amendment, inasmuch as cognizance of a suit is a process which continues up to the stage of decree.

The result is that the civil court was not competent to pass the decree which has been passed by the lower appellate court.

In the circumstances of the case I think that the plaint should even at this stage be ordered to be returned for presentation to the proper court.

17. This later part returning the plaint for presentation to the proper court was passed on account of the concession of the counsel for the Respondent in that case. The case referred to above is second appeal No. 499 of 1961 Shambhu Singh v. Dalsingar Singh (10) decided on August 24, 1964.

18. In view of what has been said above this is clear that on the findings of fact recorded by the lower appellate court the suit ceased to be cognizable by the Civil Court and in my view the proper order that should have been passed was the dismissal of the suit out right, but Sri. G.N. Verma learned Counsel for the Respondent urges that I should direct the return of the plaint as was done in second appeal No. 499 of 1961 supra. With the agreement of the learned Counsel for the Appellant I propose to pass similar order as was done in the above case.

19. In the result this appeal is allowed, the judgments and the decrees of the courts below are set aside and the plaint is directed to be returned for presentation to the proper court. In the circumstances of this case there will be no order as to costs.