

(1946) 02 AHC CK 0015
In the Allahabad High Court

D.N. Rege, Solicitor through Gopal Lal Mukhtaram	APPELLANT
Vs	
Kazi Muhammad Haider and Another	RESPONDENT

Date of Decision : 21-02-1946

Acts Referred:

Citation : AIR 1946 All 379 : (1946) 16 AWR 403

Hon'ble Judges : Allsop, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Allsop, J.—The suit which has given rise to this appeal was instituted by the plaintiff-appellant in order to recover possession over plots of agricultural land. The defendants pleaded that they were tenants, having obtained a lease from the lambardar who was a person other than the plaintiff. The learned Munsif in whose Court" the suit was instituted sent an issue to the revenue Court upon the question whether the defendants were properly tenants of the land. The revenue Court found that they were tenants. The Munsif thereupon dismissed the suit upon two grounds, namely, (1) that the defendants were tenants and (2) that the civil Court had no jurisdiction to entertain the suit. The plaintiff appealed and the lower appellate Court held that the defendants were not tenants but that the civil Court had no jurisdiction. The learned Judge of the lower appellate Court, therefore, directed that the plaint should be returned to the plaintiff for presentation to the proper Court. Against this order the plaintiff has filed an appeal to this Court upon the ground that the civil Court had jurisdiction. The appeal came before a Bench of this Court which suggested that it should go before a larger Bench as the question at issue was one of some difficulty. The appeal has, therefore, come before this Bench of three Judges. The difficulty arises on account of previous decisions of this Court. Section 44, Agra Tenancy Act, 1926, was as follows:

A person taking or retaining possession of a plot or plots of land without the consent of the land-holder and in contravention of the provisions of this Act shall

be liable to ejectment on the suit of the landholder and also to pay damages which may extend to four times the annual rental value at the rates applicable to statutory tenants.

Section 230 of the Act was as follows:

Subject to the provisions of Section 271 (which deals with the adjudication by civil Courts on issues of title raised in revenue Courts) all suits and applications of the nature specified in the fourth Schedule (which includes suits u/s 44) shall be heard and determined by the revenue Court and no Courts other than a revenue Court shall except by way of appeal or revision as provided in this Act, take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which adequate relief could be obtained by means of any such suit or application.

The question arose in *Manohar Singh and Others Vs. Sheo Saran* whether a suit by a zamindar against a trespasser could be filed in a civil Court. In that case, the plaintiff had asserted that he was the proprietor of the land which had been in the occupation of a tenant and that on the tenant's death the defendant had occupied the land and was in wrongful possession as a trespasser. The defendant contended that the civil Court could not entertain the suit because of the provisions of Sections 44 and 230, *Agra Tenancy Act, 1926*. The learned Judges said that they had to decide whether the intention of the Legislature was to oust the jurisdiction of the civil Court completely in respect of suits relating to agricultural land. They had already mentioned that the allegations in the plaint made out a case of trespass, pure and simple. The learned Judges pointed out that there was a maximum limit prescribed for the amount of damages which could be claimed u/s 44, although a larger amount might be claimed by way of mesne profits in a civil Court. They thought that the Legislature could not be presumed to have taken away the proprietor's right to claim the full amount of mesne profits from a trespasser. They then expressed the opinion that Section 44 was probably enacted in order to allow facilities to an owner of agricultural land in seeking a speedy remedy through the revenue Court if the defendant had taken possession without his consent and if he was prepared to accept damages up to the maximum prescribed. They also referred to the provisions of Section 273, *Agra Tenancy Act*, which was in the following terms:

(1) If in any suit relating to an agricultural holding instituted in a civil Court the defendant pleads that he holds such land as the tenant of the plaintiff or of a person in possession holding from the plaintiff, the civil Court shall frame an issue on the plea of tenancy and submit the record to the appropriate revenue Court for decision of that issue only....

2. They thought that the provisions of this section would be superfluous if it were to be held that no suit about the possession of an agricultural holding could be filed in the civil Court. It seems to us that the learned Judges were really intending to decide that there might be cases against trespassers on agricultural

land which could be instituted in the civil Court and this is a decision with which we would respectfully concur. We are, however, inclined to think that the decision might have been based upon another ground, namely, that the jurisdiction of a Court to take cognizance of a suit depends upon the allegations in the plaint and that the civil Court is the proper forum where those allegations are that the defendant is a pure and simple trespasser against the proprietary title as was asserted in the case with which the learned Judges were dealing whereas the proper forum is the revenue Court if the assertion is that the defendant is setting himself up merely as a I tenant and is trespassing against the tenancy rights. In *Mt. Raji Vs. Ram Lagan and Others* the learned; Judges followed the decision in *Manohar Singh and Others Vs. Sheo Saran* but emphasised the point that Section 44 gave a remedy with a limited amount of damages. The case in *Kunwar Jagdamba Singh and Another Vs. Ram Sarup and Others* was one in which the plaint asserted that the defendant was setting up a title as a tenant. The learned Judge of this Court who decided the case however still relied on the case in *Manohar Singh and Others Vs. Sheo Saran* and emphasised that part of the judgment in the case which said that Section 44 was enacted in order to allow facilities to an owner of agricultural land in seeking a speedy remedy through the revenue Court. He mentioned another case, *Dan Sahai Vs. Jai Ram Singh*, which seemed to support the contention that the suit should have been instituted in the revenue Court but decided that that was contrary to the decision of the Full Bench and that the case before him could not be distinguished from "that decision. We may mention that the decision in *Manohar Singh and Others Vs. Sheo Saran* was a decision of a Bench of three Judges of the Court. Then there is a case in *Mt. Lachhmina Kunwari Vs. Mt. Makfula Kunwari and Others*, in which the learned Judges relying on the case in *Manohar Singh and Others Vs. Sheo Saran* held that it was open to the proprietor of agricultural land either to sue a trespasser for ejectment in the civil Court or to avail himself of the speedy remedy provided by Section 44, Tenancy Act, and to file a suit for ejectment and for damages in the revenue Court.

3. There can be no doubt that there was a current of decisions based on the case in *Manohar Singh and Others Vs. Sheo Saran* that it was open to a proprietor when the Agra Tenancy Act, 1926, was in force to sue a trespasser either in the civil Court or u/s 44, Tenancy Act, in the revenue Court. As the Tenancy Act was in general intended to control the relations of landlords and tenants with the exception of suits between admitted co-sharers for arrears of revenue and profits, we are inclined to think ourselves that it was always the intention of the Legislature that a suit for ejectment of a trespasser under that Act was intended to be a suit against a person who was not claiming that he had any proprietary interest in the land but we might have felt bound to follow the previous decisions if there had been no amendment of the Tenancy Act. The law is now contained in the U.P. Tenancy Act, 1989. Section 180 of that Act is as follows:

(1) A person taking or retaining possession of a plot or plots of land otherwise than in accordance with the provisions of the law for the time being in force and

without the consent of the person entitled to admit him as tenant shall be liable to ejectment under this section on the suit of the person so entitled, or when the joint consent of more than one person is required on the suit of any one or more of such persons, and also to pay damages, which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants.

(2) If no suit is brought under this section or a decree obtained under this section is not executed the persons in possession shall on the expiry of the period of limitation prescribed for such suit or for the execution of such decree, as the case may be, become a hereditary tenant of such plot or plots.

It was certainly held in *Parmeshwari Das and Others Vs. Angan Lal*, that there was no substantial difference between Section 180 of the Act of 1939 and Section 44 of the Act of 1926, but the attention of the learned Judges was not directed to Sub-section (2) of Section 180. Section 242 of the Act of 1989 is in much the same terms as Section 230 of the Act of 1926, but it is to be noticed that the word "adequate" has been omitted before the word "relief" so that a plaintiff cannot now institute a suit in the civil Court if he can obtain relief in the revenue Court. It is immaterial whether the relief is adequate. The learned Judges who decided the case in *Parmeshwari Das and Others Vs. Angan Lal*, agreed that the word "relief" might not mean the entire relief claimed but they thought that it could not mean insignificant relief and that the relief referred to must be the relief claimed by the plaintiff or a substantial portion of it. With the greatest respect we doubt whether it can fairly be said that a decree for ejectment together with damages amounting to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants would be an insignificant relief. However that may be, our main reason for respectfully differing from the learned Judges arises out of the provisions of Sub-section (2) of Section 180, which were apparently not brought to their notice. It seems to us quite clear from the provisions of this Sub-section (2) that the section itself applies to persons who are setting up a claim to an interest in the land as tenants and not to persons who are setting up an interest as proprietors. The Legislature could surely not have intended that a person who never claimed to be a tenant at all should, by the failure of the proprietor to sue or to execute a decree for ejectment u/s 180, obtain the rights of an hereditary tenant. Under Schedule 4 to the Tenancy Act, 1939, the period of limitation for a suit u/s 180 would now generally be either six years or three years. If Section 180, Tenancy Act, was intended to apply to persons who were not claiming tenancy rights in the land but were setting themselves up as proprietors we would get the extraordinary result that a mere trespasser who never claimed any tenancy rights would, by process of law, become an hereditary tenant if he had not been sued u/s 180 within the period prescribed. If he was sued in the civil Court after the expiry of the prescribed period he might claim in the alternative that he had the rights of a statutory tenant and was entitled to remain in possession as such even if it was found that he had no proprietary interest in the

land. Most of our litigation about land is concerned with revenue paying mahals, that is, zamindari land, and a mahal is not an abstraction but is by definition an area of land. Nobody could surely think that a defendant in a suit about proprietary title could set up that he was at least an hereditary tenant of plots of agricultural land in a mahal or at least of any plots in the mahal of which he had taken actual cultivating possession as his sir or khudkasht.

4. We, therefore, think that there cannot be any doubt now that the distinction between an ordinary suit against a trespasser in a civil Court and a suit u/s 180, U.P. Tenancy Act, 1939, is that the plaintiff in the first case alleges that the defendant is setting up a title against his proprietary interest whereas in the second case the plaintiff alleges that the defendant is setting up a title to hold the land as a tenant. We do not think that Section 180 applies at all to cases in which the defendant has never given the plaintiff reason to think that he is setting up a claim to be the proprietor of the land and conversely that a suit in a civil Court does not lie when the defendant has given the plaintiff reason to think that he is claiming an interest as a tenant. We would point out that the jurisdiction of a Court does not depend upon the defence which is set up after the suit is instituted but upon the state of affairs which existed before the institution of the suit. We are not to be understood to express the opinion that a plaintiff can give either the civil Court or the revenue Court jurisdiction by making false allegations in his plaint. It may be thought that there may be cases in which the plaintiff would not know what position the defendant was claiming to occupy but we think that such cases would be very few indeed. The plaintiff would in most cases know on what grounds the defendant was claiming to be in possession of the land and if he did not, it would be open to him by means of notice or otherwise to enquire before he instituted the suit. We feel that a plaintiff should as far as possible ascertain the facts before he files a plaint. If he had reason to believe that the defendant was setting up a proprietary title he would rightly institute a suit in the civil Court and if the defendant then set up a plea of tenancy, a reference could be made u/s 288, U.P. Tenancy Act. The explanation to that section says that a plea of tenancy which is clearly untenable and intended only to oust the jurisdiction of the civil Court shall not be deemed to raise a plea of tenancy. We confess that that explanation might suggest that a plea of tenancy properly raised would oust the jurisdiction of the civil Court, but for the reasons we have given we think it must be held to apply to a plea of tenancy which was raised before the institution of the suit to the knowledge of the plaintiff. The explanation strengthens our opinion that the civil Court would necessarily have jurisdiction if there was no plea of tenancy. We think that it is very difficult in view of the provisions of Section 242, U.P. Tenancy Act, 1939, to hold that the civil Court and revenue Court can in any case have concurrent jurisdiction and we would hold, therefore, that the jurisdiction is not concurrent, but depends on the allegations made in the plaint provided those allegations are established to be true. The civil Court has no jurisdiction where a claim to a tenancy has been set up before the institution of the suit and the revenue Court

has no jurisdiction where it has not been so set up.

5. In the present case no difficulty arises because it is quite clear from the allegations made in the plaint that the defendant was setting up his right as a tenant and not as a proprietor of the land in suit. That being so, the learned Judge of the lower appellate Court was right in holding that the civil Court had no jurisdiction. We have not been asked in the alternative to hold that the learned Judge of the lower appellate Court should have decided the suit under the provisions of Section 291, U.P. Tenancy Act, 1939, and consequently we express no opinion on the point. It was doubtless not raised on account of a decision of a Pull Bench of this Court which might or might not be upheld if the matter came up before a larger Bench which was capable of reconsidering it. We may add that the decision on the question of tenancy can be of no effect one way or the other since the learned Judge has held that it was recorded in the course of proceedings arising out of a suit with which the Court in which the suit was instituted had no jurisdiction to deal. In the result the appeal is dismissed with costs.