

(1982) 04 AHC CK 0080
In the Allahabad High Court
Case No : Civil Revision No. 556 of 1980

Drug Pal Singh

APPELLANT

Vs

Pratap Singh and Others

RESPONDENT

Date of Decision : 28-04-1982

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 331

Citation : (1982) AWC 534 : (1982) RD 269

Hon'ble Judges : Gopi Nath, J

Bench : Single Bench

Advocate : B.N.L. Katiyar, for the Appellant; Radha Krishan and Prakash Krishan, for the Respondent

Final Decision : Dismissed

Judgement

Gopi Nath, J.—This is a Defendant's application in revision from an order passed by the V Additional District Judge, Farrukhabad dated 21-7-1980, deciding the issue of the maintainability of the suit in the civil court, against the applicant.

2. Plaintiffs filed a suit for mesne profits. They alleged that the parties had one-third share each in the Bhuinidhari land involved in the suit. According to the Plaintiffs, the Defendant's father had realised a sum of Rs. 18,000/- odd by way of sale proceeds of guava fruits of the groves in question, and had also realised other sums by way of profits arising out of the land in dispute. The Plaintiffs claimed a sum of Rs. 12,000/- and odd as their share of the sale proceeds aforesaid, and further sums by way of their share of the profits from the land in dispute. Since the Defendant's father did not give them their share of profits the Plaintiffs filed the instant suit for the recovery of the same. The Defendant's father having died, the suit was filed against the Defendant-applicant.

3. One of the pleas raised in the written statement was that the suit involved the determination of the share of the parties in the land in dispute and hence it was not cognizable by the civil court.

4. It was admitted to the parties that they were co-sharers. The Plaintiffs claimed a share in the sale proceeds of the guava fruits and the profits arising out of the land. One of the issues framed in the suit was whether it was cognizable by the civil court. According to the Defendant-applicant, the suit was cognizable by the revenue court. The question for determination was whether the suit for mesne profits was cognizable by the civil court. The court below held that the suit was cognizable by the civil court. The Defendant has challenged this finding.

5. Learned Counsel for the applicant urged that in pith and substance the suit was for partition, and without a declaration of the shares of the parties, it could not be decreed, hence the suit was not maintainable in civil court, and further that it could be treated as a suit for possession of agricultural holding and for compensation, which also would be maintainable in a revenue court. Reliance was placed on *Bageshar Misir v. Mahabir Shukul* 1935 AWR 625 ; *Mt. Ananti Vs. Chhannu and Others* ; *Ram Awalamb v. Jata Shanker* 1968 AWR 731; *Mt. Ram Kuer v. Iqbal Narain Singh* AIR 1947 All 92 ; *Chhedi Vs. Smt. Indrapati* , ; *Jag Narain Mallah v. Bhagauti Prasad Pandey* 1957 AWR 771; *Dwarka v. Jwala Singh* 1958 AWR 21; and *Himmat Singh v. Channoo Lal* 1964 AWR 283. *Ram Awalamb v. Jata Shanker* 1968 AWR 731 laid down that the main relief sought in the suit had to be seen to determine the jurisdiction of the court. *Mt. Ram Kuer v. Iqbal Narain Singh* AIR 1947 All 92 was also to the same effect. *Dwarka v. Jwala Singh* 1958 AWR 21 and *Jag Narain Mallah v. Bhogauti Prasad Pandey* 1957 AWR 771 laid emphasis on the real cause of action as determinative of the question of jurisdiction. *Mt. Ananti Vs. Chhannu and Others* and *Bageshar Misir v. Mahabit Shukul* 1935 AWR 625 (HC) were suits filed for possession and mesne profits. In *Chhedi Vs. Smt. Indrapati* , principles for determining the jurisdiction of the court were laid down as follows:

In order to determine whether the suit is cognizable by the Civil Court or Revenue Court, the cause of action pleaded in the suit and not the form in which the relief has been asked for has to be looked. In other words, the pith and substance of the relief and not its form should be looked into for deciding its nature and the grounds on which the relief was based are immaterial.

If the cause of action is one in which the Revenue Court can give no relief then the suit is one which would be in the Civil Court. Once the suit is maintainable for main relief in the Civil Court then there is no bar for the Civil Court to grant all possible reliefs flowing from the same cause of action. Where on the basis of cause of action the main relief is cognizable by revenue court only and the fact that ancillary reliefs claimed in the suit are cognizable by Civil Court would be immaterial in determining the proper forum for the suit.

The relief claimed in the instant suit was as follows:

(a) Yah ki decree babat basooli raqam mubligh 22,116 Rupiya 60 Paisa wa ijafa sood dauran wa ainda Muqadma bahaq muddaiyan khilaf muddalah sadir farmaee jawe.

(b) Yah ki Kharcha muqadama muddaiyan ko muddalah se dilaya jawe.

(c) Deegar dadrasee jo mufeed haq muddaiyan ho ata farmaee jawe.

The suit thus was a suit for recovery of money on the allegation that the Plaintiffs had been deprived of their share of the sale proceeds of guava fruits and the profits arising out of the land in dispute. Learned Counsel for the opposite parties contended that the suit being one purely for recovery of money, it was not cognizable by the revenue court. Reliance was placed on Mohammad Abdul Jalil Khan and Another Vs. Mohammad Abdul Salam Khan, for the submission that partition is not necessary to obtain a relief of mesne profits. In *Jumna Das v. Misri Lal* 1935 AWR 45 and *Qudsia Jan v. Zahib Husain* 1935 AWR 453 it was held that a suit for mesne profits is not cognizable by a revenue court. The instant suit had been filed in the year 1978. Under the Zamindari Abolition and Land Reforms Act, no provision has been pointed out to me to cover a suit for recovery of mesne profits, only. Section 331 of the Zamindari Abolition & Land Reforms Act provides:

Except as provided by or under this Act no court other than a court mentioned in column 4 of Schedule II shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof, or of a suit, application or proceeding based on a cause of action in respect of which any relief could be obtained by means of any such suit or application...

Thus, in order to oust the jurisdiction of the civil court, the suit has to fall under one of the items mentioned in column III of Schedule II of the U.P. Zamindari Abolition & Land Reforms Act.

6. Learned Counsel for the applicant urged that Section 209 of UP ZA & LR Act covered the instant suit for mesne profits. Section 209 provides for a suit for dispossession of an unauthorised occupant from a holding in dispute and for recovery of damages from him. This provision is mainly concerned with dispossession and the damages arising by the unauthorised occupation. The instant is a suit for recovery of mesne profits. This suit accordingly is not covered by the provisions of Section 209. As laid down in *Mohammad Abdul Jalil Khan and Another Vs. Mohammad Abdul Salam Khan*, , a partition is not necessary for recovery of mesne profits. The suit accordingly does not fall under any of the items mentioned in column III of Schedule II of the Zamindari Abolition Act. It was accordingly rightly held to be cognizable by the Civil Court.

7. The revision fails and is dismissed with costs.