

(1927) 01 AHC CK 0005
In the Allahabad High Court

Ganesh Gir and Others

APPELLANT

Vs

Sheo Mangal Pandey and Others

RESPONDENT

Date of Decision : 05-01-1927

Acts Referred:

Citation : AIR 1927 All 763 : 101 Ind. Cas. 773

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Judgement

Iqbal Ahmad, J.—This is a defendants' appeal and arises out of a suit brought u/s 102, Tenancy Act (2 of 1901) for recovery of Rs. 162-10-9 principal and interest on account of arrears of rent for the years 1326 to 1329 faslis in respect of certain plots of land situate in mouza Bhatwar. The plaintiffs' case was that they as pattedars (lessees) of the village in question made collections and that the defendants as tenants were liable to pay the rent claimed.

2. The defence to the suit was that the plaintiffs were neither the lessees nor they ever collected the rent, and that their names not being entered in the khewat they were not competent to sue. It was further pleaded in the written statement that Janki Misir, the lessor of the plaintiffs, was the holder of a four-annas share in the zemindari in which the holding in question was situate and that

he was also a co-sharer, vendee and mortgagee of the cultivatory holding in question.

3. On the pleadings of the parties the following issues were framed by the trial Court.

(1) What is the status of the plaintiff with respect to the disputed land and is he entitled to sue?

(2) What, if any, is in arrears from the defendants payable to the plaintiffs for the disputed period?

(3) Do other co-sharers in the khata except the defendants hold the disputed lands as well and have they not been made defendants and, if so, how does it affect this suit?

4. The trial Court, being of opinion that there were other co-sharers besides the defendants in the khata with respect to which the rent was claimed by the plaintiffs, dismissed the suit without recording any finding on issues 1 and 2. On appeal by the plaintiffs the lower appellate Court disagreed with the finding of the trial Court on issue 3 and remanded the case for findings on the remaining two issues that were left undecided by the trial Court. The remand by the lower appellate Court was obviously under Order 41, Rule 25, Civil ?P. C.

5. The trial Court held that as the lease in favour of the plaintiffs was unregistered it was inadmissible in evidence, and as the claim for 1326 to 1328 faslis was based on an assignment of the rent for those years by the lessor to the lessees by means of that deed of lease the trial Court held that the plaintiffs were not entitled to a decree for those years. It further held that as the plaintiffs' names were entered in the khewat as lessees for 1329 fasli, the plaintiffs were entitled to a decree with respect to that year. On these findings that Court instead of remitting the findings so arrived at to the lower appellate Court passed a decree for a sum of Rs. 35-13-0 and dismissed the rest of the claim. Objections to the findings of the trial Court were taken by both the parties in the lower appellate Court. The lower appellate Court has allowed the objection taken by the plaintiffs, and has disallowed the objection taken by the defendants with respect to the decree for 1329 fasli, passed by the trial Court, and as a result has decreed the plaintiffs' claim in full.

6. Three grounds have been taken in the memorandum of appeal filed in this Court and all those grounds have been pressed in argument before me. After hearing the learned Counsel for the parties I have come to the conclusion that the decree of the lower appellate Court is perfectly correct and ought to be affirmed.

7. The learned Counsel holding the brief of the learned Counsel for the appellants has argued that Janki Misir, who was the lessor of the plaintiffs, was not the sole owner of the mahal or patti in which the holding in dispute is situate and as such the plaintiffs as lessees from him were in no case entitled to maintain the suit without joining as co-plaintiffs with them, the other co-sharers of the mahal. This point was not taken in the written statement, nor was any issue on this point framed by the trial Court, nor does there appear to have been any discussion on this point in either of the Courts below, The point is one that is sought to be raised for the first time in second appeal. It is a point which cannot be decided unless the parties are allowed to adduce evidence on the question of fact involved in the point. As this point was not taken in either of the Courts below I declined to allow this new point to be raised for the first time in second appeal.

8. There is no force in my judgment, in the other two grounds taken in the

memorandum of appeal. The lower appellate Court seems to have proceeded on the assumption that the lease being unregistered was inadmissible in evidence. In my judgment so far as the claim for 1326 to 1328 faslis was concerned, the lease was admissible in evidence for the purpose of proving an assignment of the rent for those years by the lessor to the plaintiffs. By the assignment of the rent for those years no "right, title or interest" in any immovable property was created, declared or assigned and all that was transferred to the lessees was the money due to the lessor on account of arrears of rent. True it is that the lease as a lease of immovable property required registration, and being unregistered could not, in view of the provisions of Section 49, Indian Registration Act, be received in evidence of any transaction affecting immovable property but though inadmissible for such a purpose, it was admissible for the collateral purposes, of proving a transaction by which the rent due to the lessor was transferred to the lessees. The principle laid down in the case of Jagannath Marwari v. Chandi Bibi AIR 1921 Cal 647 and in the case of Muhamad Bakhsh v. Amir Begam [1918] 23 1918 applies to the case.

9. As regards the claim for 1329 fasli the lower appellate Court was right in holding that the plaintiffs' names having been entered in the khewat they were entitled to maintain the suit with respect to the arrears for that year. In accordance with the provisions of Section 44, Land Revenue Act, (3 of 1901) all entries in the annual register made under Sub-section (3) of Section 33 of the same Act are to be presumed to be true until the contrary is proved and as the plaintiffs' names were entered in 1329 fasli as lessees in the Record of Rights, the lower appellate Court was right in assuming that the plaintiffs had a right to recover the rent for that year.

10. For the reasons given above, the decision of the lower appellate Court, in my judgment, is perfectly correct and I dismiss the appeal with costs including in this Court fees on the higher scale.