

(1930) 12 AHC CK 0039
In the Allahabad High Court

Khaderu Chamar

APPELLANT

Vs

Sri Nath Pande and Others

RESPONDENT

Date of Decision : 03-12-1930

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 11

Citation : AIR 1931 All 198 : 129 Ind. Cas. 553

Hon'ble Judges : Dalal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dalal, J.—Both parties appear to have come to Court with wrong allegations. The defendant was holding the post of a Gorait in the Gorakhpur District. The landholders of that district were at a certain period not required to maintain Goraites, so an Act, No. 1 of 1919, Local, was passed by the Local Government to make provision for the rent-free holdings possessed at the time by Goraites in lieu of service. "Under the provisions of Section 4 (3) of that Act the defendant was declared to be a non-occupancy tenant on a certain rent for a period of seven years from 1327 Fasli. The period expired in 1333 Fasli corresponding to April 1926. The case of the plaintiff zamindar was that in April 1926 he took possession of the land and subsequently the defendant forcibly ejected him and trespassed on the land. On this allegation the plaintiff came to the civil Court to eject the defendant. The defence was that on the expiry of the period of seven years all the zamindars gave a fresh tenancy to the defendant and that therefore the defendant was, a tenant.

2. The land in suit being agricultural land and the defence being one of tenancy of that land the civil Court remitted an issue to the revenue Court which decided that the defendant was the tenant of the plaintiff. That Court went further and held that the defendant was a statutory tenant u/s 19 of the present Tenancy Act. The learned Munsif dismissed the suit. The lower appellate Court reconsidered the question of tenancy. He held that the details given by both

parties were incorrect and that the defendant was holding over at the expiry of his term of seven years. It is laid down in Section 4 (3) of the Local Act referred to above that the non-occupancy tenant whose rent has been fixed shall be entitled to hold the land at that rate for a period of seven years and an order under Sub-section 1 shall have the same force and effect as a registered lease under the provisions of Section 11, Agra Tenancy Act, 1901. The meaning of this is that the non-occupancy tenant will be treated as a lessee and would not acquire occupancy rights by the flux of the time of seven years. The case is therefore treated by the lower appellate Court as one of a lessee holding over on the expiry of his lease. The question is whether such a person is a tenant or a trespasser. Under the old Act of 1881 (Rent Act 12 of 1881) the tenancy of a lessee did not cease upon the determination of the term of the lease without his ejectment u/s 36, Rent Act, 1881 : *Shitab Dei v. Ajudhia Prasad* [1887] 10 All. 13. In the subsequent Tenancy Act there was no provision to discount the reasoning of this decision. When once a tenancy has commenced the tenant cannot be ejected otherwise than in accordance with the provisions of the Tenancy Act as laid down in Section 77 of the present Act. The same provision is made in Section 35 which narrates the different conditions under which the interest of a tenant shall be extinguished. The expiry of the period of a lease is not one of those conditions. A tenant does not automatically become a trespasser on the day when the period of his lease expires. The present case is even stronger than the case of an ordinary lessee because under the Local Act the defendant was admitted to the tenancy as a non-occupancy tenant and on the cessation of the period of seven years for which he was to hold the land at the same rent and during which he could not acquire occupancy rights he cannot lose the character of a non-occupancy tenant with which he was invested, at the commencement of his occupation of the land on payment of rent. I disagree with the lower appellate Court and hold that the defendant is the tenant of the land, and the civil Court has no jurisdiction to entertain the present suit for ejectment.

3. I do not think that the order of the Munsif was correct in dismissing the suit. u/s 273 the only question referred to the revenue Court by the civil Court is that of tenancy and not of the class of tenancy to which the defendant belonged. He was really a tenant. It is sufficient for the purposes of the civil Court to discover that a defendant is a tenant of an agricultural land and that the jurisdiction of the civil Court does not exist. It may be left to future litigation in revenue Court to determine the class of tenancy.

4. I set aside the decrees of both the subordinate Courts and direct the Munsif to return the plaint to the plaintiff for presentation to the proper Court. Parties shall bear their own costs. The appellant's counsel expressed a fear that my order may be interpreted by a revenue Court as an injunction on them to entertain the suit and to eject the defendant without the necessary procedure of a previous notice. My order does not bear any such interpretation.