

(1923) 06 AHC CK 0012
In the Allahabad High Court

Man Singh

APPELLANT

Vs

Ram Nath

RESPONDENT

Date of Decision : 28-06-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : AIR 1924 All 828 : 75 Ind. Cas. 922

Hon'ble Judges : Piggott, J

Bench : Single Bench

Judgement

Piggott, J.—The defendant to the present suit had brought a suit against the present plaintiff for arrears of rent under the Tenancy Act, claiming that the latter was his tenant in respect of certain land. The Trial Court dismissed that suit, but it was decreed by the District Judge on first appeal on the 18th of July 1916. Against that decree Ram Nath, the present plaintiff, appealed to this Court. Unfortunately, his appeal was not disposed of until the 19th of December 1918, when the decision of the District Judge was reversed and the decree of the Trial Court dismissing the suit was restored. There was an appeal against this decision under the Letters Patent, but that appeal failed. In the interval between the 18th of July 1916 and the 19th of December 1918, the present defendant, Man Singh, had taken advantage of the position which he occupied as holding a decree for rent passed by the District Judge, to realise the rent of the same land from Ram Nath, for each of three successive years, by means of the process of distraint provided by Section 119 and the following sections of the Local Tenancy Act (No. II of 1901). In each case, as soon as the standing crops were distrained by Man Singh under his alleged proprietary right, Ram Nath paid up the arrears of rent on account of which the distraint had been effected. The dates of payment are given as the 13th of December 1916, the 18th of January 1918 and the 3rd of January 1919. When the decree of the District Judge was reversed on appeal it does not seem to have occurred to Ram Nath to consider whether relief in respect of the payments thus obtained from him on the strength of the erroneous decree of the District Judge, could not be obtained by means of a

claim for damages or compensation, preferred to the Court of first instance, u/s 144 of the Code of Civil Procedure. At any rate, that point has not been raised in the present litigation and is not before me for consideration. Ram Nath waited until the 12th of July 1921, when he instituted the present suit, claiming a total sum of Rs. 550 on account of the payments which he had made in consequence of the there distrains levied by Man Singh, together with interests by way of damages. In defence Man Singh pleaded that the suit as brought was not cognisable by the Civil Court, and that, in any event, the claim was barred by limitation. Both these pleas have been repelled by both the Courts below and both are raised before me in second appeal. I think it will simplify the decision of this appeal if I deal first with the question of limitation. Assuming for the present, that this was a suit the cognizance of which by the Court in which it was instituted was barred, neither by the second clause of Section 144 of the Code of Civil Procedure, nor by Section 167 of the Tenancy Act (Local Act No. II of 1901), the question is, what Article of the First Schedule to the Indian Limitation Act is to be considered applicable to the plaintiff's cause of action. In the Courts below Article 96 of the Schedule seems to have been suggested on the plaintiff's behalf. That Article is, in my opinion, inapplicable. The plaintiff did not make these payments under any mistake. He knew that Man Singh was not really his landlord in respect of the land the produce of which had been taken in distraint. His position was that there had been an erroneous decision by the District Judge, affirming in favour of Man Singh a right which the latter did not possess, and that he himself was prosecuting an appeal against that erroneous decision. I find myself quite unable to formulate the mistake on the ground of which it is suggested that Ram Nath made these payments. The plaintiff, however, is on safer ground when he falls back on Article 120 of the Schedule and challenges the defendant to suggest some other Article as applicable to the present suit. Obviously, unless some other Article can be found, the plaintiff is entitled to avail himself of Article 120. It cannot be denied that he had a cause of action against Man Singh on account of these payments, whatever controversy there may be on the question whether he has availed himself of his proper remedy in law. If, therefore, no other Article of the Schedule can be suggested, the suit must be referred to Article 120 and is within time. The defendant has suggested Article 29 of the aforesaid Schedule, and this seems to me the Article which obviously applies to the case. Its provisions can only be avoided on one of the two contentions; either (a) that Man Singh's seizure of the growing crops on Ram Nath's land was not wrongful at the time when it took place; or (b) that it was not a seizure effected under legal process. In my opinion the seizure was undoubtedly wrongful. It has now been determined between the parties that Man Singh was not the landholder, nor was Ram Nath his tenant in respect of the land on which the crops distrained upon were growing. Man Singh had no right to distrain those crops on a claim for arrears of rent which were not in fact due to him. His seizure was nonetheless wrongful because it was done on the strength of an erroneous judicial decision in his favour which has since been reversed in appeal. The lower Appellate Court has avoided the applicability of this Article by

saying that a distraint under the Local Tenancy Act is not a seizure of property under legal process. The right of distraint is a special right conferred upon landholders in this Province by the provisions of the Tenancy Act. The right has to be exercised in accordance with law, and a landholder who deviates from the provisions which regulate the whole process of distraint is liable to have to defend a suit for compensation under the first clause of Section 146 of the Tenancy Act. A notice has to be served on the tenant through the Court and, under certain circumstances, assistance may be obtained from an officer deputed by the Court in making the distraint. We do not know in the present case if such assistance was invoked by Man Singh on any one of the three occasions which have given the plaintiff his cause of action for the present suit; but the point does not appear material. In my opinion a distraint effected under the Local Tenancy Act, (No. II of 1901), is a seizure of moveable property, under legal process, because it is done under the special provisions of the Local Act and subject to the due observance of the procedure therein laid down. Unfortunately this finding of mine on the question of limitation is in itself fatal to the plaintiff's suit. I do not deny the force of the contention that Ram Nath was put in a difficulty by reason of the long interval of time which elapsed before the erroneous decision given against him by the District Judge in the suit for arrears of rent was set right by this Court on second appeal. Nevertheless, it seems to me that, if he had any faith in the justice of his cause or in the legal acumen of this Court he could have protected himself in a variety of ways. In any event, it was incumbent on him to consider carefully the limitation period applicable to any suit which he might think of bringing. There was no reason why he should not, after this Court's decision of December the 19th, 1918, have taken prompt action, at any rate with regard to the distraint levied upon him in the first month of that same year. Nor do I altogether understand why, in any possible view of the case, he submitted to the distraint levied a year later. Presumably, before he made this payment on the 3rd of January 1919, he knew of the decision in his favour pronounced by this Court 15 days earlier. Whatever may be said about his failure to contest the other two distraints, he would have been on strong ground if he had adopted the remedy provided for him by the Tenancy Act itself in respect of the last of the three distraints. As regards the first distraint, in connection with which he made his payment of the 13th of December 1916, it would have been possible for Ram Nath to have brought a suit for the recovery of that money within 12 months of the distraint, or of the payment, and to have asked the Trial Court to suspend the decision of that suit until the determination of the appeal then pending in this Court. Whatever sympathy I may feel for the plaintiff in this suit, I cannot stretch the provisions of the Indian Limitation Act in his favour when they seem to me to be clearly against him. Article 120 of the First Schedule to the said Act should never be invoked if there is any other Article in the Schedule which, upon a reasonable interpretation of its language, seems to cover the particular suit with which the Court is dealing, and, in my opinion, Article 29 obviously covers the present suit supposing it to be one cognizable at all by the Court in which it was instituted.

2. This brings me to the other point raised by the appellant on which I do not propose to say much, because the result of the appeal is determined by the finding which I have already recorded. In my opinion, however, my decision on the question of limitation involves a finding against the plaintiff on, the question of jurisdiction also. If the Article to which I have referred, No. 29 of the First Schedule to the Indian Limitation Act, really covers the present case, then the suit now before me is essentially one for which provision is made within the four corners of the Tenancy Act itself. I have no doubt that the Legislature intended Chapter IX of the Tenancy Act, Sections 119 to 149 inclusive, to deal exhaustively with all disputes which could possibly arise by reason of the exercise of the power of distraint, by any person claiming to be a landholder against any person whom he alleged to be his tenant and from whom he alleged an arrears of rent to be due. I have no doubt that the framers of the Tenancy Act did not contemplate the entertainment by any Court other than a Revenue Court of a suit like the present, which is in substance a suit for compensation for wrongful distraint. Courts other than Revenue Courts are debarred from taking cognisance of any dispute or matter in respect of which a suit or application under the Tenancy Act itself could have been made. Now, it is not denied, and cannot be denied for a moment, that Section 142 of the Tenancy Act provides a remedy for any person whose crops have been distrained upon by any person claiming to be his landholder and entitled to an arrear of rent, if the owner of the said crops, either denies the title of the distrainer or denies that the arrear of rent in respect of which the distraint has been effected is actually due. On each of the three occasions which are alleged to have given Ram Nath his cause of act;on for the present suit, his crops had been distrained upon by a person whose title as landholder he denied, and on account of an alleged arrear of rent for which Ram Nath said that he was in no way liable. The case as put to me in argument on behalf of Ram Nath is not that he could not have instituted a suit to contest each one of these distraints, but that he could not have done so with any hope of success, so long as the District Judge's decision of the 18th of July 1916 remained in force and the error committed by the District Judge had not been set right by this Court in second appeal. I am afraid there is no question, in the provisions of the law which I am bound to administer, as to the hopes of success or certainty of failure with which suits to contest a distraint might or might not have been instituted. The question I have to consider is whether, on the state of facts and of law which Ram Nath has all along asserted, and which he has successfully asserted on final appeal to this Court, it was or was not open to him to contest each of these distraints by a suit brought u/s 142 of the Local Tenancy Act. There is even something to be said against the argument that such suits were certain to fail. After all, in the original suit for arrears of rent the decision of the Trial Court, presumably the Court of the Assistant Collector, had been in his favour. He could have pointed out that an appeal was pending against the decision of the District Judge, winch, therefore, could not have the effect of res judicata, and he might have asked for a fair re-consideration of his case on the merits. In the worst event, he could have asked the Court to release his crops

upon security, under the appropriate provisions of the Tenancy Act, and to postpone the further hearing of the suit brought to contest the distraint until the determination of the second appeal pending in this Court. I cannot help thinking, moreover, that if a suit had been filed to contest the first distraint, and even a short adjournment obtained from the Assistant Collector's Court, an attempt might have been made, with fair chances of success, to obtain from this Court a special order expediting the hearing of the appeal against the decision of the District Judge.

3. For these reasons I am satisfied that this appeal must succeed. The defendant Man Singh has, in my opinion, an adequate answer in law to the claim now made upon him. There are no equities in his favour, and I do not propose to allow him any portion of his costs. As an honest man he ought to have refunded the money. He has taken refuge behind the Statute of Limitation and has taken advantage of the fact that the plaintiff has been badly advised in the means by which he has sought to enforce his right. My order, therefore, is, that I set aside the decrees of both the Courts below and, dismiss the suit, leaving the parties to bear their own costs throughout.