

(1928) 04 AHC CK 0009
In the Allahabad High Court

Mansa Ram

APPELLANT

Vs

Mohammad Husain and Others

RESPONDENT

Date of Decision : 27-04-1928

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 66

Citation : AIR 1928 All 624

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—The plaintiff of the first Court is the appellant here. He is the zamindar and defendants 1 to 3 are his exproprietary tenants. Defendant 4 is a sub-lessee from defendants 1 to 3. The suit was brought for the ejectment of the defendants on the ground that the tenants were using the land for a purpose which was inconsistent with agriculture. Defendant 4 has a ginning and pressing factory and they have been given this land for the purpose of collecting and spreading cotton and they have been using it for the same purpose.

2. The defence was that the land had been in use of defendant 4, for the present purposes, for several years and the suit was barred by limitation.

3. The Court of first instance dismissed the suit on the ground of limitation but the learned District Judge set aside this finding. He was of opinion that a fresh lease which was granted to defendant 4 in July 1924, gave a fresh cause of action to the plaintiff. The learned Judge however, gave defendants 1 to 3 the benefit of Section 66, N.W.P. Tenancy Act.

4. In this Court it is contended that the tenants had once before had the benefit of Section 66, Tenancy Act, and the learned Judge should not have given them again that benefit.

5. For the respondents it is contended that the learned Judge was wrong in not dismissing the suit on the ground of limitation and as the suit was liable to be dismissed on the ground of limitation the appellants should not be heard in

support of his appeal.

6. There is no appeal by the defendants and, therefore, it becomes unnecessary to enter into the question of limitation.

7. The important question is whether the learned Judge was right in granting the defendants the benefit of Section 66, Tenancy Act.

8. As I have already stated the suit was based on Clause (b), Section 57 of the Act. Section 66 has no application to such a suit. The rule which does apply is embodied in Section 65 of the Act. Mr. Bagchi for the respondents had asked me to apply Section 65; on the other hand Mr. Sen on behalf of the appellant, urges that the defendants once had the benefit of Section 66 and they should not be allowed any benefit even u/s 65.

9. The previous judgment is not discussed in the judgment of the Court below. I had it read out to me. It appears that in 1918 the plaintiffs brought a suit for ejectment on the ground that the lease in favour of defendant 4 was unregistered and was for a term of more than one year. The decree that was passed was that the defendants should be ejected unless the lease is registered. The lease was for five years and was, apparently, subsequently registered, for we find that no action was taken under the decree for ejectment of the defendants. That lease expired in June 1924 and a fresh lease was granted. This lease being registered the plaintiffs brought the suit under Clause (b), Section 57. The former suit was apparently brought under Clause (d), Section 57. Once having granted a lease for five years the tenants were not entitled to grant again a fresh lease for five years. A suit, therefore, could have been brought for ejectment under Clause (d), Section 57 as well. But such a suit has not been brought and if it had been brought an appeal could not have been entertained by the civil Court. The appeal would have gone to the Commissioner under serial No. 18, Schedule 4 of the Act. I must accept that the suit is one under Clause (d), Section 57 and must hold that S 66 has no application.

10. I see no reason why the benefit of Section 65 should not be extended to the ex-proprietary tenants. Anything done in the previous suit does not disentitle them from getting the benefit of Section 65.

11. I modify the decree of the Court below and direct that the defendants shall remove the wall that has been built on the land and shall bring the land under cultivation. Defendant 4 shall be ejected from the land. If defendants 1 to 3 fail to remove the wall and to bring the land under cultivation within three months of this date they too shall be ejected. The defendants will pay the costs of the plaintiff-appellant in all the three Courts