
(1928) 07 AHC CK 0024
In the Allahabad High Court

Masoodulzaman

APPELLANT

Vs

Raza Husain

RESPONDENT

Date of Decision : 23-07-1928

Acts Referred:

Citation : AIR 1928 All 698 : 110 Ind. Cas. 750

Hon'ble Judges : Dalal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dalal, J.—The plaintiff who, I am informed, is a practising barrister in Banda, gave a lease to the defendant of 80 bighas of land for agricultural purposes. Subsequently the defendant erected two lime-kilns and a pound on this land, obviously inconsistent with the purpose for which the land was let. The plaintiff, therefore, brought a suit for ejectment u/s 57 (b), Tenancy Act. The trial Court decreed the suit, but this decree was set aside and the suit dismissed by the learned Judge of the lower appellate Court. On the first point the learned Judge has held in favour of the plaintiff that the lime-kilns and the pound were inconsistent with the purpose for which the land was let. Presumably, therefore, the learned Judge would have maintained the decree for ejectment of the trial Court if he had not held further that the plaintiff had contracted out of the provisions of Section 57 in favour of the landlord. The clear question at issue is whether the plaintiff has so contracted out. There are definite conditions in the lease. The first condition is that the land may be cultivated or be let out to subtenants, and the trees growing thereon may be cut. Under condition No. 4 the defendant is given power to build houses according to his needs (hash zarurat). By these words it was meant "necessary for the purposes of agriculture." According to that condition, he is also given permission to plant trees. In condition No. 7 there is a clause that the defendant shall be liable to ejectment for non-payment of rent, and on that ground only. The plaintiff appears to have been very keen to provide for the recovery of rent. This liability of the defendant

to pay rent has been repeated in several conditions to make certain that rent would be paid regularly. There is this further condition of the defendant's liability to ejectment on non-payment of rent. The learned Judge of the lower appellate Court has drawn some conclusions adverse to the plaintiff on the supposition that he being a practising barrister must be presumed to know law. His ignorance of law, however, is patent from condition No. 7. If he had any knowledge of law, he would have known that condition No. 7 could not be put into force against a tenant, who could only be ejected in accordance with the provisions of the Tenancy Act, and not on the ground of nonpayment of rent, even if the tenant made such a contract. I am not aware of the time when the plaintiff was called to the Bar, but with all respect, if he was called about the time that I was called, the only presumption I would draw as regards a barrister would be his ignorance of law. I am told that the plaintiff is only 35 or 36 years of age. Possibly, therefore, he knows his law better. At the same time, as I have pointed out, he has given evidence of his ignorance of law, and when he has given such evidence, it cannot be presumed that he fully knew the law on the subject of landlord and tenant of an agricultural holding when he executed the lease.

2. The question before me for decision, it may be repeated, is whether the plaintiff contracted out of his powers to eject the tenant u/s 57, having regard to the terms of the lease, which is an agricultural lease, where no permission is given to the defendant to build on the land as he pleased. I am satisfied that it was not the intention of the parties that the plaintiff should contract out of the privileges which he enjoyed under the provisions of Section 57, Tenancy Act. I entirely agree with the argument of Mr. Mushtaq Ahmad, that the provisions of Section 3, Tenancy Act, prevented the tenant from acting to the detriment of his own interest and did not prevent the landlord from doing so. At the same time a Court must look for specific evidence, either direct or circumstantial, to enable it to hold that a party had contracted out of certain privileges to which he was entitled under Statute Law. I have read the written statement. It is nowhere alleged there that the plaintiff had by the lease contracted out of his rights under the Tenancy Act. The defendant has pointed in his written statement to condition No. 4 of the lease. I have already expressed my opinion that the condition permitted building in accordance with the necessity of an agricultural lease and not building any house at the pleasure of the defendant. I hold that the plaintiff under the lease did not contract but of the privileges which he enjoyed under the provisions of Section 57, Tenancy Act.

3. The learned Judge of the lower appellate Court has pointed out that limekilns have been erected and a pound put up over a small area. The case, therefore, is one where use may be made of the provisions of S 65, Tenancy Act.

4. In the result I grant to the plaintiff a decree for the ejectment of the defendant with costs of all the Courts, but direct that if the defendant repairs the damage by removing the lime-kilns and the pound within one month of to-day's date, the decree shall not be executed except in respect of costs.