

(1948) 10 AHC CK 0017
In the Allahabad High Court

Mrs. V.E Argles and Others

APPELLANT

Vs

Chhail Behari Srivastava and Others

RESPONDENT

Date of Decision : 04-10-1948

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 217

Citation : AIR 1949 All 286

Hon'ble Judges : Malik, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Malik, C.J.—The plaintiff claimed that he was a thekadar of the property in suit under a thekanama dated 18th August 1943, executed by the appellants in his favour. The theka was for a period of seven years. The plaintiff alleged that the appellants were interfering with his possession and he therefore asked for an injunction to restrain the appellants from interfering with his possession during the continuance of the theka. The case was tiled in the Court of the Revenue Officer. Tehsil Pharenda Section 217, U.P. Tenancy Act, was the section under which the case was filed. The case came up before the Revenue Officer on 10th March 1948, and decreed the same.

2. Various points had been raised by the defendants and the learned Revenue Officer had framed ten issues. The defendants had denied the validity of the lease, had alleged that the plaintiff had given up possession in March 1946, and that the suit was barred by estoppel, etc. Against the order dated 10th March 1948, granting an injunction to the plaintiff against the defendants this appeal was filed by some of the defendants.

3. A preliminary objection has been raised on behalf of the plaintiff-respondents that the appeal does not lie in this Court and. the appeal should, therefore, be dismissed.

4. Section 217, U.P. Tenancy Act, (Act No XVII [17] of 1939) provides that:

A thekadar who has been wrongfully ejected from the whole or any part of the theka area, or wrongfully prevented from exercising any of his rights as thekadar, by the lessor or any person claiming under or as agent of the lessor may sue for any or all of the following remedies:

(a) ...

(b) an injunction;...

There is no doubt, therefore, that the claim was rightly filed in the Court of the Assistant Collector u/s 217 (b), U.P. Tenancy Act. An appeal can be filed in this Court only if the case comes u/s 265 of the Act. Section 265 provides that:

An appeal shall lie to the District Judge from the decree of an Assistant Collector of the First Class or of a Collector in any of the suits included in group A of Schedule 4 in which

(a) the amount or value of the subject-matter of the appeal exceeds Rs. 50 or .1

(b) the liability to pay rent or the amount, of rent annually payable has been in issue in the Court of first instance, and is in issue in the appeal; or

(c) the amount of rent payable separately to one or more of a number of co-sharers has been in issue in the Court of first instance, and is in issue in appeal; or

(d) in any suit under the provisions of Chapter XII in which the liability to pay revenue or rent or the amount of the revenue or rent annually payable has been in issue in the Court of first instance, and is in issue in appeal:

Provided that, when the amount or value of the subject matter of the suit exceeds five thousand rupees the appeal shall lie to the High Court or the Chief Court as the case may be.

It is admitted that Section 217 is not included in group A of Schedule 4. Learned Counsel has, however, relied on Section 222 which provides that:

Every suit or application brought by a thekadar against the lessor or against a thekadar by the lessor, under the provisions of this Chapter, which is of the same nature as any suit or application specified in Schedule 4 which may be brought by a tenant against a landholder or by a landholder against a tenant, shall be deemed to be included in that Schedule under the same serial number as such similar suit or application.

We have, therefore, to see what would be the section under which a suit similar to the present suit is brought by a tenant against a landholder

5. A suit similar to the present suit can be brought by a tenant against his landholder u/s 59 read with Section 64 (b). Sections 59 and 64 (b) are, however, not included in group A of Schedule 4. Learned Counsel has urged that it is not only a suit brought by a tenant against a landholder which should be taken as

analogy but also a suit brought by a landholder against a tenant. He has relied on Section 174 and has urged that a suit brought by a landholder against a tenant for injunction u/s 174 is included in group A of Schedule 4 and that an appeal would, therefore, lie to this Court. Section 174 is to this effect:

Notwithstanding anything in Section 172 a landholder may, in lieu of suing for ejectment, sue

(a) ...

(b) for an injunction....

Section 172 provides for a suit by a landholder against a tenant for ejectment on certain grounds specified in that section, the point for decision, therefore, is whether in deciding the question, whether a suit by a thekadar against a lessor is to be deemed to be included in group A of Schedule 4, we are to take as analogy only suits brought by tenants against the landholder or also suits brought by a landholder against a tenant.

6. The question is of first impression as there is no previous decision on the point. Under the Bonn-Western Provinces Tenancy Act (Act II of 1901) a thekadar had the same status as a tenant and the word "tenant" was defined as follows:

"tenant" includes a thekadar, but does not include (mortgagee of proprietary rights, or a rent-free grantee.

And in that Act it was, therefore, not necessary to have a section similar to Section 222 and in all suits in group A of Schedule 4 where the valuation was above Rs. 5,000 an appeal against the decree of the lower Court could be filed in the High Court. The definition of the word "tenant", however, underwent a change in the Agra Tenancy Act. (Act III of 1926). A tenant was there defined as follows;

"tenant" includes a grove-holder, but does not include a mortgagee of proprietary rights, a rent-free grantee or, save as otherwise expressly provided by this Act, a thekadar.

A thekadar being, therefore, not a tenant unless specially provided for to the contrary in any section, it was necessary to make a special provision for thekadar in group A of Schedule 4 and Section 220 was therefore, enacted which was to the same effect as the present Section 222 which has already been quoted. The definition of the word "tenant" in the U.P. Tenancy Act of 1939 is similar to the definition of that word in the Agra. Tenancy Act of 1926. A tenant is defined as

the person by whom rent is, or but for a contract express or implied would be payable and except when the contrary intention appears, includes a sub-tenant, but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a rent-free grantee, a grantee at a favourable rate of rent or,

except as otherwise expressly provided by this Act, an under-proprietor, a permanent lessee or a thekadar.

7. Prior to the change in the definition of the word "tenant" when a thekadar filed a suit it could be appealable to this Court only if a suit filed by a tenant of the same nature was appealable, as tenant included a thekadar. It cannot be said that by enacting Section 220 the Legislature necessarily intended to make a change. It appears to us that the same rights which a thekadar had before the definition was altered, were intended to be reserved to him by introducing Section 220, and all that Section 220, now Rule 222, means is that if a thekadar filed a suit against his lessor of a nature which, if brought by a tenant against his landholder, would be appealed to the District Judge or the High Court as the case may be, the thekadar would have a similar right of appeal. There can be no analogy between a suit by a thekadar against his lessor and a suit by a landholder against his tenant, while there can be analogy between a suit filed by a lessor against a thekadar and a suit filed by a landholder against his tenant. Similarly there can be analogy between a suit filed by a thekadar against his lessor and a suit by a tenant against his landholder. It would also appear from Section 217, U.P. Tenancy Act, no. XVII of 1939 that the Legislature intended to put the thekadar as far as possible in the same position as a tenant. Certain provisions were, therefore, made applicable to a thekadar in the same way and to the same extent as to a tenant.

8. We are, therefore, of the opinion that the appeal was wrongly filed in this Court. We, therefore, direct that the memorandum of appeal be returned to the learned Counsel for presentation to the proper Court.

9. Learned Counsel for the respondents has prayed for dismissal of the appeal. We are, on the other hand, only returning the memorandum of appeal for presentation to the proper Court. We therefore, consider that the ends of justice would be met if the respondents are allowed half their costs. We, therefore, give them half their costs of this Court.