

(1954) 04 AHC CK 0012
In the Allahabad High Court
Case No : Appeal No. 47 of 1946

Mst. Sunder Kali and another

APPELLANT

Vs

Maharaja Pateshwari Prasad Singh and others

RESPONDENT

Date of Decision : 05-04-1954

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 168

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 19(ix)

Citation : (1954) 24 AWR 359

Hon'ble Judges : B. Malik, C.J; Randhir Singh, J

Bench : Division Bench

Advocate : H.D. Srivastava, s, for the Appellant; R.K. Varma, for Respondent No. 1. and Rampati Pandey, for Respondent No. 313., for the Respondent

Final Decision : Dismissed

Judgement

Randhir Singh, J.—This is an execution appeal against an order passed by the Revenue Officer of Gonda on the 20th May, 1946 ordering ejectment of the Appellant from a part of his holding u/s 168 of the U.P. Tenancy Act.

2. It appears that a decree for arrears of rent was passed against the Appellant on the 7th March, 1943. The decree holder applied for execution on the 30th November, 1943, but his execution remained infructuous and the file was ultimately consigned to the record room on the 17th January, 1944. On the 18th May, 1945, the decree holder applied for issue of a notice u/s 168 of the U.P. Tenancy Act as the decree for arrears of rent, which had been passed against the Appellant on the 27th March, 1943, had remained unsatisfied. Objections were filed to this application of the decree holder on behalf of the Appellant. The main grounds on which he opposed the application were that he was an under proprietor and not a permanent lessee and as such the decree holder had no right to make an application u/s 168 of the Tenancy Act; that the application was barred by time, and lastly that the Appellant was not liable to ejectment as the decree holder had not Exhausted all remedies which lay in execution against the

appellant. The learned Revenue Officer found that the Appellant was not an under-proprietor but was a lessee. He also held that the applicant was not barred by time and that it was not necessary for the decree holder to exhaust all remedies by way of execution before making an application u/s 168 of the U.P. Tenancy Act. He, therefore, ordered ejectment of the Appellant from a part of the holding. The Appellant has now come up in appeal.

3. The learned Counsel for the Appellant does not now press the first two points, that is, he does not now challenge the finding of the lower court that the Appellant was not an under-proprietor or that the application was barred by time. The only ground which he has pressed in arguments before us is that the decree holder was not entitled to avail himself of the remedy provided by Section 168 of the U.P. Tenancy Act, as he had not exhausted all the modes of execution which were open to him before making an application u/s 168 of the Tenancy Act, Section 168 runs as follows:

168 (1) When a decree for arrears of rent against an ex-proprietary, an occupancy or hereditary tenant has not been completely satisfied within one year from the date of such decree by any mode of execution other than sale of holdings, the land holder may apply to the Court which passed the decree for the issue of a notice to the tenant for payment of the amount outstanding and for his ejectment in case of the default and the Court shall thereupon issue such notice.

4. A perusal of the words quoted above clearly show that it was not the intention of the Legislature that a decree holder should exhaust all remedies in execution before making an application u/s 168 of the U.P. Tenancy Act. Learned Counsel for the Appellant has not been able to show us any authority in support of his contention. There seems to be no force in the contention raised on behalf of the Appellant. The order passed by the lower Court was, therefore, a perfectly good order.

5. Another point which has been pressed on behalf of the Appellant is that the Appellant had become a sirdar in view of the provisions of Section 19(ix) of the Zamindari Abolition and Land Reforms Act. It is not disputed that the Appellant was actually ejected from the holding on the 26th June, 1947. The appellant already having lost possession of the holding, and the order passed by the Revenue Officer having been found to be a good order, no relief can be given to the Appellant u/s 19 of the Zamindari Abolition and Land Reforms Act.

6. The appeal is therefore dismissed with costs to the Respondents.