
(1914) 05 AHC CK 0020
In the Allahabad High Court

Musammat Allah Jilai and Another

APPELLANT

Vs

Umrao Hussain and Others

RESPONDENT

Date of Decision : 21-05-1914

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 36

Citation : 24 Ind. Cas. 535

Hon'ble Judges : Rafique, J;Chamier, J

Bench : Division Bench

Judgement

1. One Faiz All had an interest in patti Jamal-ud-Din, Mauza Sambhal Khera. He died leaving a widow and four daughters who, in 1875, sold the entire interest in the patti with the exception of 26 bighas to which the present suit relates. It appears that in 1888 the vendors were recorded as ex-proprietary tenants of these 26 bighas. The plaintiffs and the fourth defendant are representatives of the vendors of 1875 and they have brought this suit for a declaration that they are the proprietors of the 26 bighas. In 1903 the plaintiffs applied to the Revenue Authorities for correction of the village papers. The defendants predecessors objected and the order of the Court was as follows : "The applicants are in possession of the land and can remain so. If they want to have any change made in their capacity they should move a Civil Court for it. I, therefore, dismiss the application." In January 1912 the defendant applied to the Revenue Court u/s 36 of the Land Revenue Act of 1901 for assessment of rent on the 26 bighas. The present plaintiffs objected that they were the owners of the land and not ex-proprietary tenants of it. The defendants replied that the matter had been settled by the order of the Revenue Court passed in 1904. The Court decided that it could not go behind the order of 1904 and it proceeded to assess the rent on the holding. The Courts below have decided in favour of the plaintiffs.

2. In second appeal to this Court two points were taken viz., that the suit was not maintainable in a Civil Court and that if maintainable, it was barred by limitation. The first point after some argument was abandoned. With reference to

the second point the learned Advocate for the defendants-appellants relies upon the decisions of this Court in Francis Legge v. Rambaran Singh 20 A. 35 (F.B.) : (1897) A.W.N. 193. and Akbar Khan v. Turaban 1 Ind. Cas. 557 : 5 A.L.J. 637 : (1908) A.W.N. 252 : 4. M.L.T. . 444 : 31 A. 9. The respondents rely upon other decisions of this Court which will be referred to presently.

3. All that was decided in the case of Francis Legge v. Ranibaran Singh 20 A. 35 (F.B.) : (1897) A.W.N. 193. was that Article 120 of the Limitation Act is applicable to a suit of this nature and that the six years run from the date on which the cause of action arises. In Parshottam v. Parmanand Miscellaneous Reference No. 279 of 1908 decided on 18th December 1907. certain lands alleged to belong to the plaintiff had been recorded before 1896 in the village papers as the common land of the village. Several years afterwards in a partition proceeding, it was proposed to treat the land in question as the common land of the village and the plaintiff then sued for a declaration of his title. This Court held that the suit was within time having been brought within six years of the partition proceeding. The learned Judges observed that so long as the plaintiff was allowed to remain in undisturbed possession it was not obligatory on him to institute a suit for declaration of title. In Robert Skinner v. Shanker Lal 1 Ind. Cas. 556 : 3 A. 10 n. : 5 A.L.J. 638n. the defendant to the suit had got his name entered in the khewat in May 1899 in spite of the plaintiff's objections. On the strength of this entry a suit was brought for profits of the share more than six years after the order of 1899. The plaintiffs then sued for a declaration of their title. It was held that the suit was within time inasmuch as the institution of a suit for profits gave the plaintiffs a fresh cause of action." In Sheopher Singh v. Deo Narayan Singh 17 Ind. Cas. 675 : 10 A.L.J. 413. the plaintiffs had all along been in possession of the land in suit, but in 1901 the Settlement authorities had made an entry which showed that they were entitled to a smaller area. They had objected to the entry-, but their objection had been thrown, out. They however remained in undisturbed possession of all the land to which they were entitled. In 1909 the Collector ordered that the entry should be corrected, but the Commissioner set aside his order and the plaintiffs then brought a suit for a declaration. One of us, on the strength of the two cases last cited, held that the suit was within time, inasmuch as the proceedings of 1909 gave the plaintiffs a cause of action whether the proceedings of 1901 gave them a cause of action or not. The decision was confirmed in an appeal under the Letters Patent. In Akbar Khan v. Turaban 1 Ind. Cas. 557 : 5 A.L.J. 637 : (1908) A.W.N. 252 : 4.M.L.T. 444 : 31 A. 9. the name of the defendant had been entered in the revenue papers in respect of the property in 1895. A suit for declaration of title was brought in 1904 and the question of limitation was raised. On behalf of the plaintiffs it was contended that a fresh cause of action accrued to them in 1903 when the defendant objected to the correction of the khewat. This Court held that the proceedings of 1903 did not constitute a fresh cause of action. They regarded the refusal to allow the entry to be corrected as a continuation of the original cause of action.

4. In the present case notwithstanding the order of April 1904 the plaintiffs remained in possession of the land without liability to pay rent therefor. It was not until rent was assessed in the proceedings of 1910 that they became liable to pay rent. It seems to us that the order of 1912 gave the plaintiffs an entirely fresh cause of action. That order was almost equivalent to a suit against them for rent of the land. On the authorities we think that the decision of the Court below was correct. We dismiss this appeal with costs.