
(1922) 03 AHC CK 0047
In the Allahabad High Court

Musammat Jhamola Kunwar

APPELLANT

Vs

Thakur Hanwant Singh and Others

RESPONDENT

Date of Decision : 24-03-1922

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 199, 201
North Western Provinces Tenancy Act, 1901 — Section 199, 201
North Western Provinces Tenancy Act, 1901 — Section 199, 201

Citation : AIR 1922 All 129 : 66 Ind. Cas. 915

Hon'ble Judges : Stuart, J; Lindsay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These are cross-appeals against a decree of the Additional Judge of Allahabad. We have heard Counsel at length in both cases and have come to the conclusion that the decision of the Court below should be maintained and that both appeals should be dismissed.

2. The dispute between the parties relates to an area of 27 bighas and 8 biswas which is situated in a village called Mauza Ghosia, Mahal Turab Ali. The suit, which was filed by Musammat Jhamola Kunwar, plaintiff, was filed in consequence of certain directions given by a Revenue Court in which an application for partition of this village had been filed by Thakur Hanwant Singh and Thakur Raghuraj Singh.

3. The facts of the case are somewhat complicated, but the following statement of them will show the point which arises for decision:

4. In this village there are three sets of co-shares. Hanwant Singh and Raghuraj Singh between them owned a 4-annas share. Formerly one Talaiyar and his wife Siddan Bibi owned a 6-annas share and Mohammad Iqbal and his wife, Champa Bibi, another 6-annas share.

5. It is found that in or about the year 1887 the co-sharers in these villages, in

order to avoid suits against each other for profits, agreed to an allotment of certain lands which the co sharers were to hold in their own occupation. They were under this arrangement, to treat rents received from these areas so allotted as representing their share of the profits in the village.

6. Under this arrangement Hanwant Singh and Raghuraj Singh or their predecessors were allotted an area of 18 bighas and 5 biswas as owners of a 4 annas share.

7. It is an admitted fact that the 27 bighas and 8 biswas, now in dispute, were allotted under the same arrangement to Talaiyar and his wife, Siddan Bibi, as owners of a 6 annas share.

8. In the year 1896 the 6 annas share belonging to Talaiyar and his wife, Siddan Bibi, was sold by auction and was bought by one Kalian Chand who was the father in-law of the present plaintiff, Musammat Jhamola Kunwar.

9. The result of this auction-sale was that the owners of this 6 annas share became ex-proprietary tenants of the 27 bighas and 8 biswas now in dispute.

10. After the share had been sold, Ahmad Yar, son of Talaiyar and Siddan Bibi, made a mortgage, with possession of the plate making up the 27 bighas and 8 biswas. This mortgage was made in favour of Hanwant Singh and the father of Raghuraj Singh, and in the mortgage-deed the property mortgaged was described as the ex-proprietary holding of the mortgagors.

11. As the result of these transactions, it must be taken that Kalyan Chand became the owner of the 6 annas share which had formerly belonged to Talaiyar and his wife Ahmad and Musammat Siddan Bibi but the ex-proprietors of the 27 bighas 8 biswas and Hanwant Singh and the father of Raghuraj Singh became the mortgagees of the ex-proprietary holding of Ahmad Yar and Siddan Bibi.

12. After this mortgage of the ex-proprietary holding was made, Sumer Chand, son of Kalyan Chand, as the purchaser of a 6-annas share of Talaiyar and his wife, brought a suit to eject the mortgagees. This suit was dismissed. It was held in that litigation that the 27 bighas and 8 biswas in dispute were the sir lands of Ahmad Yar and Siddan Bibi and that consequently Samar Chand was not entitled to get possession. This matter was decided by a decree of the District Judge passed in the year 1899.

13. Sumer Chand being defeated in his suit for possession made an application to the Rent Courts for assessment of rent on these sir lands as against Ahmad Yar. The result of this was that rent was assessed and consequently Sumer Chand and Ahmad Yar stood thereafter as these sir lands in the relation of landlord and tenant.

14. In the year 1902 Hanwant Singh and the father of Raghuraj Singh brought a suit against Sumer Chand for profits arising out of these lands measuring 27 bighas and 8 biswas.

15. At the time this suit was brought, the position of Hanwant and the father of Raghuraj was this:

(1) They were the owners of a 4-annas share in the village.

(2) They had bought a 3 annas 4 pies share one of the remaining 12 annas share in the village and they were lessees of a 1-anna 7 pies share out of this 12-annas share.

16. This share belonged to Alim-un-Niaga who had defaulted in payment of revenue. Her share was made over in form to Han want and the father of Raghuraj.

17. In the suit which Hanwant and the father of Raghuraj brought for profits they claimed at being co-owners in the 12-annaa share. Obviously they could bring no claim for profits regarding their 4-annas share, for that claim was barred under the arrangement which had been come to between the parties in the year 1857. We have already observed that, under this latter arrangement, Hanwant Singh and the predecessor of Raghuraj were in possession of 18 bighas 5 biswas of sir land.

18. This suit for profits was ultimately decided by Mr. Rastomji, the District Judge. He was of opinion that the plaintiffs in that suit were not entitled to any share of the profits arising out of this area of 27 bighas and 8 biswas. The Judge was of opinion that Khalil, whose share had been purchased by Hanwant and Raghuraj, and Musammat Alim un Nissa whose share was held by them in farm had lost all right to claim a share in the profits of this area.

19. In the year 1905 Sumer Chand, the son of Kalyan Chand, brought a suit for ejectment of Hanwant Singh and Raghuraj Singh as mortgagees of this exproprietary holding of 27 bighas 8 biswas. That suit was based upon an alienation that the ex-proprietor, Ahmad Yar, had relinquished his ex proprietary holding. This suit, however, failed.

20. In the year 1910 in execution of a decree for arrears of rent Musammat Jhamola Kunwar who had succeeded her husband, Sumer Chand, ejected Ahmad Yar, the ex-proprietor, and his mortgagees Hanwant Singh and Raghuraj Singh. The result of these proceedings was that the ex-proprietary tenancy came to an end and the plaintiff Jhamola Kunwar got possession of the 27 bighas and 8 biswas.

21. We come now to the year 1913. In this year Hanwant and Raghuraj again brought a suit against Sumer Chand for profits. Mr. Daniels, the District Judge, before whom the case came in appeal, dismissed the suit, holding that the previous decision of Mr. Rastomji was res judicata.

22. In the present suit which has been brought by Musammat Jhamola Kunwar for a declaration that she is the sole owner by adverse possession of this area of 27 bighas and 8 biswas, it has been held by the learned Judge of the Court below

that by reason of the decision of Mr. Rastomji which was accepted as *res judicata* by Mr. Daniels the defendants Hanwant Singh and Raghuraj Singh are not entitled to put forward any claim to a share as proprietors of this area of 27 bighas 8 biswas so far as they purport to hold a share in the 12-annas share other than the 4 annas share, which originally belonged to them.

23. In the appeals now before us the argument has been taken that the decision of the learned Additional Judge is erroneous, and that the question of title of Hanwant Singh and Raghuraj Singh to a share in the 27 bighas 8 biswas is not *res Judicata*.

24. In our opinion the decision of the Court below is perfectly correct. Ordinarily the Rent Courts in this Province have no jurisdiction to determine questions of title but under the provisions of Sections 199 and 201 of the Agra Tenancy Act, special jurisdiction has been conferred upon Rent Courts in virtue of which they are empowered, in given circumstances, to decide questions of title.

25. It has been repeatedly held by this Court that the decision of a Rent court u/s 199 in the exercise of its jurisdiction to decide a question of title is *res judicata* and will prevent the trial in a subsequent suit in Civil Court of any issue relating to the same proprietary right.

26. As pointed out by the learned Judge in the Court below, the rulings to this effect have been given with reference to the language of Section 199, but on the same principles the same view of the law must be taken with regard to proceedings u/s 201 in cases where under that section the Rent Court is given authority to decide questions of title.

27. Section 201 lays down that if in any suit instituted under the provisions of Chapter XI of the Act the plaintiff is not recorded as having any proprietary right entitling him to institute such suits and the defendant pleads that the plaintiff has not such proprietary right, the Court shall proceed *mutatis mutandis* as directed in Section 199, Sub-section 3 of this section lays down that if the plaintiff is recorded as having such proprietary right, the Court shall presume that he has it, but that nothing in the Sub-section shall affect the right of any person to establish by suit in the Civil Court that the plaintiff has not such proprietary right.

28. It follows from the terms of this section, therefore, that if the plaintiff in a suit for profits, which is a suit under the provisions of Chapter XI of the Act, is recorded as having the proprietary right, the Bent Court must presume that he has got that right and decree the suit. The decision of the Rent Court, however, in these circumstances does not bar the defendant in the suit from going to a Civil Court and obtaining a declaration regarding his proprietary title.

29. In the other case provided for by this section, that is to say, where the plaintiff is not recorded as having a proprietary right, the Rent Court is given the option of following one or other of the courses laid down in Section 199, that is

to say, the Sent Court may direct the plaintiff to go to a Civil Court within a given period and sue for declaration of his title or it may, if it so chooses, try the issue itself, and when it elects to pursue the latter course, the Rent Court is deemed to be a Civil Court competent to try this issue of proprietary right and its procedure is to be regulated in accordance with the provisions of the Code of Civil Procedure.

30. In the litigation in the year 1902 which was terminated by the decree of Mr. Rustomji, the District Judge, it appears to us that the Rent Court exercised its right of trying the issue regarding the proprietary title. So far as we are able to ascertain from the judgment (and that is the only document which is before us), the case was a case in which the plaintiffs there were not recorded as having proprietary right entitling them to institute the suit. We gather from what is set out in Mr. Rustomji's judgment that at that time this area of 27 bighas and 8 biswas was recorded in the name of Ahmed Yar who was described as the proprietor of the lands in question.

31. Later on in 1913 when Hanwant and Raghuraj again attempted to sue for profits, this decision of Mr. Rustomji's was held to be *res judicata*, and we think rightly so.

32. It follows from all this that we must hold that in the present suit the learned Judge of the Court below was right in saying that the claim of Hanwant Singh and Raghuraj Singh to a share of these 27 bighas and 8 biswas is untenable to the extent that they represent the share of Khalil which they purchased in the 12-annas share which was outside their own share of 4-annas. In the concluding portion of his judgment the learned Judge states the position very clearly. He holds that in so far as Hanwant and Raghuraj claimed to represent by purchase the share of Khalil, and in so far as they represent Alim-un-Nissa as lessees, they are estopped from maintaining now that they have any interest as co-sharers, left in the property in suit. The learned Judge, however, "has made it clear that so far as their original 4 annas share is concerned, they are not so estopped.

33. The Cross Appeal No. 805 of 1920 appears to us to have no force. The contention in this appeal appears to be that inasmuch as the question of title to the 27 bighas and 8 biswas has been held by the lower Court to be *res judicial* between the parties, the position is that Musammat Jhamola Kunwar is entitled to the exclusive right over this area, and that in making the partition of this village she is entitled to keep this area in addition to the share which would be allotted to her in proportion to the interest which she holds in the village. In our opinion that contention cannot be maintained for the reasons we have stated above, The decision which is *res judicata* between the parties is a decision only as against Hanwant Singh and Raghuraj to the extent to which they represent the shares of Khalil and Alim un Nissa. There is nothing in the previous litigation, between the parties which would prevent Hanwant and Raghuraj from claiming in the partition that they were entitled to their full share of the village lands in proportion to their original share of 4 annas which they have had all along.

34. As regards Alim un Nissa, the learned Judge has rightly held that no question of *les judicata* can arise as against her. She was no party to the suit which was decided by Mr. Rustomji, and as the learned Judge properly observes, a lessor does not claim under his lessee.

35. The result of all this is that we find the decision of the lower Appellate Court to be perfectly correct. We dismiss both the appeals with costs in each case to the respondents on the higher scale. In Second Appeal No. 805 separate sets of costs will be awarded to (1) Hanwant Singh and Raghuraj Singh and (2) Ataullah, defendant-respondent. Costs in this Court will include fees on the higher scale, if any.