
(1915) 01 AHC CK 0007
In the Allahabad High Court

Narain Sarup and Others

APPELLANT

Vs

Nanda

RESPONDENT

Date of Decision : 30-01-1915

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 202
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1915 All 115 : 28 Ind. Cas. 568

Hon'ble Judges : Piggott, J

Bench : Single Bench

Judgement

Piggott, J.—This is an appeal by the plaintiffs in a suit for ejectment. The defendant's reply was that the land had been leased to him, that he was drilling on after the expiry of the lease and was doing so with the consent of the plaintiffs themselves, who had realized rent from him. He further expressly pleaded that, as the relationship of landlord and tenant is subsisting between the parties, the suit is not cognizable by a Civil Court. On this the Court of first instance took notice u/s 202 of the Agra Tenancy Act (Local Act II of 1901). The defendant failed to institute any suit within the prescribed period of three months, for the determination of the question whether he was holding the land as tenant of the plaintiffs. On this the Court of first instance rejected the defendant's plea of tenancy, as it was bound to do, and decreed the plaintiffs' suit. In appeal an extraordinary plea was taken by the defendant, that he ought to have been given the benefit of Section 202 of Act II of 1901. The lower Appellate Court pointed out that the defendant had been given the benefit of this section, but had failed to institute a suit within the prescribed period. Nevertheless the learned Subordinate Judge has somehow arrived at the conclusion that the defendant was holding the land in question as tenant of the plaintiffs, and has dismissed the suit because the plaintiffs had failed to serve the defendant with a notice of the termination of his tenancy. I do not think this finding was open to the Court below in view of the provisions of Section 202, Clause (2), already referred to. It has been sought to support the decision of the

Court below, by a plea that the land in suit is not an agricultural holding and is not subject to the provisions of Section 202 aforesaid. This plea is not open to the defendant, in view of the attitude taken by him in the Courts below. Whether the land in suit is or is not an agricultural holding is a plain question of fact. It is by no means concluded by the circumstance that this land, along with a larger area, was originally leased to the defendant for grazing purposes. The defendant said that it was an agricultural holding and that the suit to eject him from it was not cognizable by the Civil Court. In the lower Appellate Court he pleaded that the provisions of Section 202 of the Agra Tenancy Act did apply to this holding. It may be pointed out further that in this view of the case no question, of notice u/s 106 of the Transfer of Property Act (Act of IV 1882) arises. The Act exempts leases for agricultural purposes from the provisions of Chapter V. I accept this appeal, set aside the decree of the lower Appellate Court and restore that of the Court of first instance. The plaintiffs will get their costs throughout.