

(1924) 04 AHC CK 0046
In the Allahabad High Court

Phool Singh

APPELLANT

Vs

Mt. Gobind Koer and Others

RESPONDENT

Date of Decision : 01-04-1924

Acts Referred:

Citation : AIR 1925 All 37

Final Decision : Dismissed

Judgement

1. This is an unfortunate case on the facts found. The plaintiff was the minor son of one Gitam Singh. During his minority his father granted a perpetual lease of certain agricultural land on terms highly favourable to the lessee and unfavourable to himself. It seems to have been also found by two Courts that undue influence was used by two of the defendants in obtaining this lease from the plaintiff's father. After the death of his father the plaintiff acting through his next friend endeavoured to obtain from the Revenue Court the ejectment of the defendants admitting them to be his tenant but claiming that they had no higher right than those of tenants at will. When this lease was set up the attempt at ejectment in the revenue Court failed.

2. The plaintiff then brought the present suit asking for a declaration that the lease is not binding upon him either on the ground that it was obtained by undue influence exercised upon his father or even if that plea should fail on the ground that it amounted under the circumstances to an alienation of joint ancestral family property in the hands of the plaintiff's father, which the latter was not competent by law to make. Two Courts found in favour of the plaintiff on all points and granted him the declaration prayed for.

3. There was a second appeal to this Court and in this appeal the first two points taken related to the question whether the land covered by the lease was joint ancestral property and whether there had been a clear finding on the question of undue influence. On the first point the learned Judge of this Court held that there was a finding of fact in favour of the plaintiff. At any rate the learned Judge found definitely that the property in dispute was ancestral property belonging jointly to

the plaintiff and his father. On the second point the learned Judge of this Court held that the finding of the lower appellate Court to the effect that the terms to the lease were clearly prejudicial to the plaintiff's interests was sufficient, in itself to make the contract of lease, voidable at the plaintiff's instance.

4. There was, however, taken in this Court, a further point which had been overruled in the two Courts below. This was based on the proviso to Section 42 of the Specific Relief Act; that is to say, it was contended that the plaintiff ought in this present suit to have claimed the ejectment of the defendants and actual possession over the disputed land.

5. The two Courts below had discussed this point, but had come to the conclusion that there had certainly been an agricultural tenancy in favour of the defendants and the latter could only be ejected by a proceeding in the Revenue Courts, and that consequently the proviso to Section 42 of the Specific Relief Act had no application inasmuch as the plaintiff could not have sought relief by way of ejectment from the Civil Court in which this suit was instituted. On this ground alone the learned Judge of this Court reversed the decision of the lower appellate Court and dismissed the plaintiff's suit.

6. The question is one which comes up from time to time in one form or another and is always likely to give some little trouble. The real difficulty to our minds is whether the Revenue Court, that is to say, the Court of the Assistant Collector, was not really competent to have adjudicated upon the entire question raised by the pleadings before it, whether it could not have tried out the plain issue whether the defendants were mere tenants at will in respect of this land, or whether they were holding under a covenant of perpetual lease, valid and enforceable against the plaintiff.

7. It seems, however, to have been conceded, in the course of the abortive proceedings attempted by the plaintiff in the Revenue Court, that the said Court would not eject the dependants unless and until the question of the validity of this lease had been adjudicated upon by a competent tribunal, that is to say, by suit in the Civil Court. It seems to us, therefore, whether that decision was right or wrong, it must be treated as a decision *inter partes* and which neither party is now entitled to challenge in argument. If it be once assumed that the Assistant Collector could not have ejected the defendants, then in our opinion this suit was clearly maintainable in the form in which it was brought. The Civil Court could not have undertaken to eject the defendants from this agricultural holding. Any such decree by an Assistant Collector would have offended against the clear provisions of Section 167 of the Tenancy Act.

8. The learned Judge of this Court seems to have assumed that on the facts set up by the plaintiff himself the Civil Court could, if it found those facts proved, have treated the defendants as mere trespassers. This however, is not a correct statement of the plaintiff's position. He admitted that there had been a letting of this land by his father to the defendants. His father was perfectly competent to

let even joint ancestral land for a reasonable period and on reasonable terms. What the plaintiff complained of was that there had been what amounted in effect to an alienation of joint ancestral property, which his father was not competent to make to the prejudice of the plaintiff's interest. It was those terms in the covenant of lease under which the defendants claimed to be entitled to hold, (a) in perpetuity and (b) at a low rate of rent, which the plaintiff was assailing. In our opinion relief by way of declaration could and ought to have been granted in this case. The question whether the suit as brought did not offend against the provisions Section 167 of the Tenancy Act was never raised in the trial Court, and could not be raised at any subsequent stage.

9. We set aside the decree of the learned Judge of this Court and restore that of the lower appellate Court with costs of both hearings in this Court to the plaintiff, including fees on the higher scale.