
(1968) 08 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 314 of 1967

Raghunath and Others	Vs	APPELLANT
Ram Khelawan and Others		RESPONDENT

Date of Decision : 02-08-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Limitation Act, 1908 — Section 14
Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and
Miscellaneous Provisions Act, 1950 — Section 10
Uttar Pradesh Tenancy Act, 1939 — Section 183

Citation : AIR 1970 All 26 : (1968) 38 AWR 559 : (1969) RD 344

Hon'ble Judges : S.N. Katju, J; Jagdish Sahai, J; Gangeshwar Prasad, J

Bench : Full Bench

Advocate : R.M. Sahai, for the Appellant;

Final Decision : Allowed

Judgement

Jagdish Sahai, J.—The dispute between the parties in this case relates to plots Nps. 5317/1 and 5317/2 area 28 acres each, situate in village Machhli Sahar, Fergana Ghesuwa, district Jaunpur. These two plots originally constituted plot No. 5317 measuring 56 acres. Syed Abdullah was the fixed rate tenant of this plot. On 24-8-1949 he sold his half share in the aforesaid plots to Ram Khilawan, Ram Dular and Daya Ram, respondents Nos. 1 to 3. Thereafter proceedings u/s 145, Criminal P.C. were started, Those proceedings terminated in favour of Ram Khilawan, Ram Dular and Daya Ram. Thereafter, on 12th May, 1951 Naresh, father of the appellants Raghunath, Kedar Nath, Jai Nath and Hari Lal filed a suit against Ram Khilawan, Ram Dular, Daya Ram and Kaleem who was the landlord of the plots in dispute (he succeeded Syed Abdullah on the latter's death) u/s 183 of the U.P. Tenancy Act, 1939 (hereinafter referred to as the Act) on the allegation, inter alia, that the plots in dispute were sub-let to him (Naresh) by Syed Abdullah, but the respondents Ram Khilawan, Ram Dular and Daya Ram,

who had purchased half share of the plot from Syed Abdullah, were interfering with his (Naresh's) possession.

2. Ram Khilawan, Ram Dular and Daya Ram contested the suit, inter alia, on the plea that Syed Abdullah, who was the original fixed rate tenant of the aforesaid plots, had sold his half share in the same to them on 24-8-1949 and had sublet the remaining half to them. It was also pleaded that Naresh had never been in possession over the land in suit. The Assistant Collector decreed the suit on 23-4-1953. Ram Khilawan, Ram Dular and Daya Ram filed an appeal against the decree passed by the learned Assistant Collector. That appeal was heard by the learned Additional Commissioner, Varanasi, who allowed it on 22-2-1954 and dismissed the suit filed by Naresh on the ground that the revenue Court had no jurisdiction to try the suit.

3. Naresh did not appeal against the decree passed by the learned Additional Commissioner, Varanasi but filed a suit in the Civil Court against Ram Khilawan, Ram Dular and Daya Ram for recovery of possession over the plots in dispute. The Civil Court returned the plaint on the finding that it had no jurisdiction to entertain the suit. Naresh then presented the plaint before the Assistant Collector, I class, Jaunpur on 6-2-1958 making it a suit under Sections 59/180/183 of the Act and sought the relief of ejectment against Ram Khilawan, Ram Dular and Daya Ram. The Assistant Collector decreed the suit on 23-9-1959. Ram Khilawan, Ram Dular and Daya Ram filed an appeal against the decree dated 23-9-1959. This appeal was heard by the Additional Commissioner, Varanasi who allowed it, set aside the decree passed by the Assistant Collector and dismissed the suit on 7-6-1960. Naresh then preferred a second appeal before the Board of Revenue. The Board of Revenue allowed the appeal on 7-7-1963/11-4-1966 (7-7-1965 being the date of the judgment of the Member of the Board of Revenue who heard the appeal and 11-4-1966 being the date of the order of concurrence passed by the other Member).

4. Ram Khilawan, Ram Dular and Daya Ram then filed Writ Petition No. 3075 of 1966 in this Court and prayed for the quashing of the order passed by the Board of Revenue and the Assistant Collector, I class, Jaunpur.

5. The writ petition came up for hearing before Oak, J. (as he then was.) No one appeared before him on behalf of Naresh. On 6-1-1967 he allowed the writ petition and quashed the order of the Board of Revenue but directed the parties to bear their own costs. Against the judgment of Oak, J. (as he then was) dated 6-1-1967, the instant special appeal has been filed in this Court. The special appeal has been referred to a Full Bench by a Division Bench of this Court of which one of us (Jagdish Sahai, J.) was a member.

6. The following three submissions were made before Oak, J. (as he then was):--

1. The decision dated 22-2-1954 operated as res judicata.
2. The trial Court committed an error of law apparent on the face of the record in

giving Naresh the benefit of Section 14 of the Limitation Act.

3. The Board of Revenue could not pass a decree for possession.

7. Oak, J. repelled the first two submissions made on behalf of Ram Khilawan, Ram Dular and Daya Ram but upheld the last submission. He felt himself bound by the decision of this Court in Phailu v. Board of Revenue, U.P. 1965 ALJ 290, and rested his decision on that authority.

8. In the special appeal Mr. Ram Manohar Sahai has contended that the case of Phailu had been wrongly decided by this Court. He submitted that the correct view was taken in the unreported decision of Raghubar Dayal and H. P. Asthana, JJ. dated 24-12-1958 which was not brought to the notice of either of the learned Judges who decided Phailu's case 1965 ALJ 290, or to that of Oak, J. The learned counsel contended that the judgment of Oak, J. (as he then was) should be set aside and this special appeal be allowed because he wrongly held that the proviso to Section 183 of the Act stood in the way of Naresh and the appellants.

9. The view taken in Phailu's case 1965 ALJ 290 is that a sub-tenant plaintiff would not be able to obtain a decree u/s 183 of the Act in spite of the provisions of Section 10 of the U.P. Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950 (hereinafter referred to as U.P. Act 7 of 1950).

10. The proviso to Section 183 of the Act reads:

"Provided that no decree for possession shall be passed where the plaintiff at the time of the passing of the decree, is liable to ejectment in accordance with the provisions of this Act within the current agricultural year."

11. The question for consideration is whether Naresh, and after him, the appellants are liable to ejectment in accordance with the provisions of the Act. The proviso to Section 183 of the Act stands from 1939 when the U.P. Tenancy Act, 1939 was originally enforced. At that time, neither Section 295-A of the Act nor Section 10 of U.P. Act 7 of 1950 were on the statute book.

12. Section 175 of the Act is headed as ""Ejectment on Other Grounds" and reads:--

"175. ejectment on application--Subject to the provisions of Section 19, a non-occupancy tenant shall also be liable to ejectment on the application of the landholder on any of the following grounds, namely:

(a) that he is a tenant holding from year to year;

(b) that he is a tenant holding under a lease or for a period which has expired or will expire before the end of the current agricultural year."

13. Section 176 (1) of the Act reads: "176. Application and notice. (1) An application for the ejectment of a tenant under the provisions of Section 175

shall be made between the first day of July and the thirtieth day of September and not otherwise, and shall be accompanied by the notice specified in Section 161:" These two provisions show that a subtenant can be ejected at will but the application for that purpose must be made between July 1 and September 30 of a year. Inasmuch as the Legislature conferred on the sub-tenant no immunity from ejectment, in case the application for the same is made, between the period mentioned above, the proviso to Section 183 of the Act provided that if a plaintiff in the suit u/s 183 of the Act himself is liable to ejectment in the current agricultural year, no decree in his favour will be passed. Such proviso was necessary in respect of a person who himself was liable to ejectment because to award him a decree for possession against another when he himself was liable to ejectment would have been meaningless. It was with this intention that the proviso to Section 183 of the Act was enacted. The Legislature amended the Act and introduced in 1947 Section 295-A which reads:--

"295-A. Right of Sub-tenant to retain possession.--Notwithstanding any contract to the contrary or anything contained in this Act or any other law for the time being in force, every person who, on the date of the commencement of the United Provinces Tenancy (Amendment) Act, 1947, is a sub-tenant shall, subject to the provisions of the proviso to Sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 be entitled to retain possession of his holding for a period of five years from that date, and for this period nothing in Sub-section (2) of Section 44 or Section 171 shall render the landholder of such sub-tenant liable to ejectment under the provisions of Section 171:

Provided that nothing in this section shall authorise a sub-tenant of a person who belongs to one of the classes mentioned in Section 41 to retain possession of his holding after the disability of such person has ceased."

14. The substance of Section 295-A of the Act is that a sub-tenant obtained immunity from ejectment for a period of five years from 14-6-1947 which is the date of the commencement of the U.P. Tenancy (Amendment) Act, 1947, i.e. upto 14-6-1952, notwithstanding what is contained in Section 44 or Section 171 of the Act, with the result that sub-tenant could obtain decrees for ejectment u/s 183 of the Act upto 14-6-1952 without the proviso of that section obstructing their way.

15. The Board of Revenue was of the opinion that the expression "current agricultural year" occurring in the proviso to Section 183 means "the agricultural year in which the suit was filed". Learned counsel for the appellant has submitted that the suit giving rise to this special appeal was filed on 6-2-1958. The agricultural year in which 6-2-1958 would fall, would end on 30th June, 1958 with the result that no application for ejectment of Naresh, or of the appellants, could have been made in the period 1st July, 1957 to 30th September, 1957. The learned counsel contends that the consequence was that Naresh or the appellants were not liable to ejectment in the current agricultural year and for that reason the proviso to Section 183 of the Act would not be attracted. Learned

counsel contended that in any case by virtue of Section 10 of U.P. Act 7 of 1950, Naresh and the appellants had obtained immunity for an indefinite period from ejectment. Section 10 of U.P. Act 7 of 1950 reads:

"Notwithstanding anything contained in any law for the time being in force, all suits, applications or proceedings of the category specified in the Schedule pending on the date of the commencement of this Act shall remain stayed for so long as the Act remains in force."

Admittedly, the Act was in force when the Board of Revenue, decided the case. Again admittedly, the Act is still in force. Entry III of the Schedule to U.P. Act 7 of 1950 reads:--

"III.-- Under the United Provinces Tenancy Act, 1939 (U.P. Act 17 of 1939)-- Suits, applications or proceedings under Sections 175, 180 (other than suits in which the plaintiff Is a tenant), 181 (about applications and proceedings relating to the last two classes.)"

16. Reading Section 10 along with Entry III of the Schedule, it becomes apparent that the appellants could not be ejected from the land in suit on the date when the suit was filed or on the date when the trial Court decreed the suit or on the date when the Board of Revenue affirmed the decree of the trial Court and reversed that of the Additional Commissioner.

17. The words used in the proviso are: "is liable to ejectment." In view of what is contained in Section 10 read with Entry III of the Schedule to U.P. Act 7 of 1950, the appellants were not liable to ejectment.

18. In 1965 ALJ 290 (supra) Desai, C.J. observed:--

"It was on account of the provisions of another Act that a suit brought against him would have been stayed but it does not mean that he was not liable to ejectment at all under the U.P. Tenancy Act"

With great respect to the learned Judges who decided Phailu's case 1965 ALJ 290, the question in that case clearly was whether, notwithstanding the provisions of Section 10 read with Entry III of the Schedule of the U.P. Act 7 of 1950, the appellant in that case was still liable to ejectment. The words "in accordance with the provisions of this Act" occurring in the proviso to Section 183 are connected with the earlier words "is liable to ejectment." The whole sentence reads: "is liable to ejectment in accordance with the provisions of this Act". So long as the bar created by Section 10 read with Entry III of the Schedule of the U.P. Act VII of 1950 stood, there was no provision in the Act under which the subtenant plaintiff could be ejected. The important point to notice is that the U.P. Act 7 of 1950 does not deal with ejectments at all. It only gives certain immunities to tenants, including the subtenants. Ejectment from an agricultural holding could only be made under the provisions of the Act (U.P. Tenancy Act, 1939). Therefore, for whatever reason, be it because of Section 10 of U.P. Act 7 of 1950 or for any other reason if a plaintiff-sub-tenant could not be

ejected, the proviso to Section 183 of the Act could not stand in his way in obtaining a decree for possession. Again, Desai, C.J. has in Phailu's case 1965 ALJ 290 observed as follows:--

"For all that was known when the question arose whether the Section 183 suit should be decreed or not was that the Act could be repealed before the end of the agricultural year and there would have been no ban on the passing of a decree in a suit u/s 175 before the end of the agricultural year and the Section 183 suit could be decreed."

On the date when the Assistant Collector decreed the suit or the Board of Revenue affirmed his decree and reversed that of the Additional Commissioner, Section 10 and Entry III of the Schedule of U.P. Act 7 of 1950 stood intact. Consequently, Irrespective of the consideration that U.P. Act 7 of 1950 could be repealed at any time, on all the relevant dates that Act being in force, gave immunity to the appellants from being ejected. It is not possible to read U.P. Act 7 of 1950 in isolation. It was one of the definite steps taken by the Legislature to accord immunity to the sub-tenants from ejectment because the Legislature thought that they being the actual tillers of the soil, were entitled to protection. This policy of the Legislature is apparent from the circumstances that in 1947, the Act (U.P. Tenancy Act, 1939) was amended and Section 295-A was added to it, which gave five years immunity to sub-tenants against ejectment. Thereafter the U.P. Legislature passed the U.P. Tenants (Acquisition of Privileges) Act, 1949, Section 3 of which gave the sub-tenants the right to become bhumidhars on payment of ten times of the rent. This was followed by the U.P. Act 7 of 1950 which created a bar to the ejectment of sub-tenants during the period in which that Act was in force. The U.P. Zamindari Abolition and Land Reforms Act also gave certain rights to sub-tenants who, under certain circumstances, became sirdars.

19. Inasmuch as ejectment from an agricultural holding could only be made in accordance with the provisions of the U.P. Tenancy Act, 1939, and in the instant case, because of the existence of Section 10 read with Entry III of the Schedule of U.P. Act VII of 1950, the provisions of the Act could not be invoked to eject the appellants, the proviso to Section 183 did not stand in their way. It is true that the immunity against ejectment which the appellants received was from another Act (U.P. Act 7 of 1950) but that was not material at all, because so long as the immunity existed, the appellants could not be ejected in accordance with the provisions of the Act.

20. For the reasons that I have given in this judgment, I respectfully disagree with the view taken by the learned Judges who decided Phailu's case 1965 ALJ 290 (supra).

21. Mr. Sukha Ram Singh contended that the trial Court wrongly gave the benefit of Section 14 of the Limitation Act to Naresh or the appellants and the Board of Revenue committed an error of law apparent on the face of the record in

affirming that view. Sub-section (1) of Section 14 of the Limitation Act reads:--

"14(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it."

22. Naresh filed a suit against Ram Khilawan and others in the revenue Court as far back as 12th May, 1951. That suit was decreed by the Assistant Collector on 23rd April, 1953. The respondents before us appealed to the Additional Commissioner and pleaded that the revenue Court had no jurisdiction to entertain and decide the suit. Their appeal was allowed and the suit was dismissed on the finding that not the revenue Court but the Civil Court had jurisdiction to entertain the suit, Naresh then filed a suit in a Civil Court Ram Khilawan and others pleaded before the Civil Court that it (the Civil Court) had no jurisdiction to entertain the suit and the plaint was returned to Naresh for presentation in the revenue Court, whereupon Naresh filed the suit, giving rise to this special appeal, in the revenue Court. There cannot be any manner of doubt that throughout Naresh and the appellants acted in good faith in filing the suits first in the revenue Courts and then in the Civil Courts. It cannot also be doubted that they acted with diligence. In my opinion, therefore, Section 14 of the Limitation Act was fully applicable to the facts of the present case. In any case, it is not a matter over which a writ petition could lie under Article 226 of the Constitution of India. It was for the Assistant Collector, before whom the suit giving rise to this special appeal was filed, to decide whether or not Naresh was prosecuting his earlier suits with due diligence and in good faith. He decided in favour of Naresh. The Board of Revenue, which is the final Court of appeal, also decided in favour of Naresh. There is clear evidence in support of the finding recorded by the Assistant Collector and the Board of Revenue. They had jurisdiction to decide the matter. They have committed no illegality in deciding the case. Consequently, in my opinion, the question of the applicability of Section 14 of the Limitation Act could not be the subject matter of the writ petition. In any case, I have held that on the facts and circumstances of the case, the appellants have fully succeeded in making out a case for being given the benefit of Section 14 of the Limitation Act.

23. Mr. Sakha Ram Singh then contended that in view of the findings recorded by the Additional Commissioner in the appeal directed against the decree passed by the Assistant Collector in the first suit on 23-4-1953 that the revenue Court had no jurisdiction to entertain the suit, the suit giving rise to this appeal was barred by res judicata. He has placed reliance upon Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others, . In that case, Ghulam Hasan, J. had observed that even an erroneous decision on a question of law operates as res judicata between the parties to it. An erroneous decision on a question of law by a Court competent to

decide the matter is not the same thing as an order by a Court to the effect that it had no jurisdiction to entertain the matter. Besides, the judgment of the Civil Court returning the plaint for being filed in the revenue Court on the ground that it had no jurisdiction to entertain the plaint and the competent Court was the revenue Court is subsequent in time to the judgment of the learned Additional Commissioner. It is trite that in a case of res judicata it is the latter decision and not the former which creates the bar. I, therefore, find no substance in the plea of Sri Sakha Ram Singh with regard to res judicata.

24. For the reasons mentioned above, I would allow this special appeal, set aside the judgment of Oak, J. (as he then was) dated 6-1-1967 and dismiss. Writ Petition No. 3075 of 1966 with costs.

S.N. Katju, J.

25. I agree.

Gangeshwar Prasad, J.

26. I agree with brother Jagdish Sahai.