
(1926) 03 AHC CK 0049
In the Allahabad High Court

Ram Chand

APPELLANT

Vs

Shiama and Others

RESPONDENT

Date of Decision : 11-03-1926

Acts Referred:

North Western Provinces and Oudh Land Revenue Act, 1901 — Section 57
North Western Provinces Tenancy Act, 1901 — Section 199

Citation : AIR 1926 All 682

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This appeal raises a question of law, viz,, whether a decision of a Record Officer given between two contending parties, each claiming to be a sir-holder of the same land, is binding upon them when the same question is raised in an ejectment suit.

2. The facts of the case are all admitted and are briefly these; The appellant, who was the plaintiff in the Court of first instance, is recorded as the sir-holder of the lands in suit. His father, Khubi Ram, is recorded as the plaintiff's tenant of the sir lands for a period of 33 years. The defendants, who are the respondents in this appeal, are recorded as dar-shikmi or sub-tenants holding under Khubi Ram for a period of 24 years. The rent payable by Khubi Ram is recorded as Rs. 22 and the rant payable by the defendants is recorded as Rs. 12. The plaintiff sued for the ejectment of the defendants, viz., his own father and the respondents, Shiama and Charan Singh, on the allegation that the plaintiff did not like to have the defendants as his tenants any longer and wanted their ejectment. Khubi Ram did not enter appearance. Shiama and Charan Singh contended that they held the lands as their khudkasht for more than 12 years and that they were not liable to be ejected.

3. The suit succeeded in the Court of the Assistant Collector who gave his decision on the 30th of March 1922. Two days prior to this date, a decision had

been given by the Assistant Record Officer and the question is what is the effect of that judgment. It appears that before the Assistant Record Officer the respondents Shiama and Charan Singh made an application for the correction of the entry in the khatauni. They stated that they held the lands as their khudkasht but they were recorded as sub-tenants of the tenant Khubi Ram who himself is recorded as a tenant of his son Ram Chand, the plaintiff in this case. The learned Record Officer was of opinion that Shiama and Charan Singh had already held more than their fair share of sir lands and they are not to have more. He accordingly directed that the applicants' names should be recorded as sub-tenants of Ram Chand.

4. It is contended on behalf of Ram Chand in this Court that the decision of the Assistant Collector is binding on the revenue Court, and, therefore, on the Court which decided the ejectment suit and also on the Courts which would hear the appeal in the ejectment suit.

5. In my opinion this contention is not sound. u/s 57 of the N.W.P. and Oudh Land Revenue Act, a decision given under Ch. 4 would be binding on all revenue Courts except where a decision is given under the provisions of Sub-section 3, Section 40 of the same Act. When a question of title is raised in a suit for ejectment, Section 199 of the N.W.P. Tenancy Act comes into play and the revenue Court is required either to decide the question of title itself or to refer the defendant to the civil Court for the decision of the question. It is further laid down that where the revenue Court takes upon it-self to decide the question of title, it should proceed in accordance with the method given in the Civil P.C., notwithstanding anything contained in Section 193 of the Act. This means that when the revenue Court decides to try the question itself, it converts itself into a civil Court and appeal is allowed from its decision to the civil Court. The reason is clear. Ordinarily a revenue Court has no jurisdiction to decide a question of title between two persons, each of whom claims to be the proprietor of a certain land. The function of decision lies entirely with the civil Court. But to avoid conflicts of jurisdiction a special provision has been made authorizing the revenue Court in certain cases to decide a question of title. It is asked to decide the question then as if it were a civil Court. It is clear, therefore, that when the question of title to the sir lands in the present case was raised, the revenue Court, having decided to determine the question itself, became to all intents and purposes a civil Court. It follows that the decision of the Record Officer on the question of title could not operate as *res judicata* on the question raised in the ejectment proceedings.

6. The second ground why the judgment of the Record Officer should not operate as *res judicata* is this. The dispute relates in this particular case to certain lands and proprietary title in them. The entry which would result from the decision would not be an entry within the meaning of Clause (e) of Section 32 of the Land Revenue Act. For the particulars required by Section 55 are to be entered in register mentioned in Clause (e) of Section 32, and Section 55 indicates that the register contemplated is one of tenants alone and not of proprietors. By Section

44 of the Land Revenue Act the decisions in cases of dispute are not binding on the civil Court unless they relate to a matter relating to Clause (e), Section 32 of the Act. Section 57 says the same thing. The matter in dispute is really beyond the scope of the annual register mentioned in Clause (e) of Section 32. If that be so, the decision is not conclusive and may be religated in a civil Court.

7. The appeal fails and is hereby dismissed with casts including counsel's fees in this Court on the higher scale.