
(1953) 08 AHC CK 0028

In the Allahabad High Court

Case No : First Appeal No's. 101 and 102 of 1946

Roop Kishore Tandon and Others

APPELLANT

Vs

Braj Kishore Tandon and Others

RESPONDENT

Date of Decision : 14-08-1953

Acts Referred:

Evidence Act, 1872 — Section 114

Uttar Pradesh Agriculturists Relief Act, 1934 — Section 2

Citation : AIR 1954 All 117 : (1953) 23 AWR 705

Hon'ble Judges : Randhir Singh, J;Agrawala, J

Bench : Division Bench

Advocate : J.S. Trivedi and G.N. Mehrotra, for the Appellant; M.K. Seth, holding brief of K.N. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

1. These two appeals arise out of two suits but the same question is involved in both of them and they may, therefore be disposed of by this judgment.

2. Appeal No. 101 of 1946 arises out of a suit u/s 33, Agriculturists' Relief Act for accounting under a mortgage deed dated 9-7-1928, executed by Shrimati Rani Piari defendant-respondent 4 and her four sons, Onkar Nath, Brij Kishore, Shiam Kishore, defendants-respondents 1 to 3 and the plaintiff-appellant, Rup Kishore. The mortgagee was Sukhan Lal, defendant-respondent 5 who transferred his mortgagee rights to Brij Kishore one of the mortgagors, arrayed as defendant-respondent No. 1. The plaintiff's case was that he was an agriculturist both at the date of the suit as well as at the date of the loan & therefore, he was entitled to sue for accounts under the Agriculturists' Relief Act.

3. The defence was that the plaintiff was not an agriculturist on the date of the loan.

4. Appeal No. 102 arises out of a similar suit for accounts u/s 33, Agriculturists' Relief Act in respect of two mortgage deeds one dated 9-7-1923 and the other

dated 20-1-1928, executed by the same mortgagors, namely, Ram Piari, Onkar Nath, Brij Kishore, Shyam Kishore and Rup Kishore in favour of Shrimati Shyamo Bibi, wife of Onkar Nath one of the mortgagors. Shrimati Shyamo Bibi having died, her rights have devolved upon her husband, Onkar Nath, defendant-respondent 1. The same question whether the plaintiff Rup Kishore was an agriculturist on the date of the loan arises in this appeal as well.

5. The Court below accepted the defence contention and dismissed the suits.

6. The only point involved in these appeals is whether the plaintiff was an agriculturist at the date of the loans. The plaintiff-appellant relied upon three facts to establish that he was an agriculturist on the date of the loan. Firstly, that he held a vested remainder in certain property along with his mother, Ram Piari, who held a life estate under the will of Seth Jai Dayal, father of Ram Piari. Secondly, that he was a co-tenant in the tenancy holding which stood in the name of Onkar Nath, defendant-respondent. Thirdly that under the mortgages in suit he should be deemed to be merely a surety and not the original mortgagor. It was contended on his behalf that as he was an agriculturist at the date of the suit he had a right to sue u/s 33, Agriculturists' Relief Act as admittedly Ram Piari the principal debtor was an agriculturist on the date of the loan.

7. It appears that Seth Jai Dayal executed a will in favour of Ram Piari and her four sons on 18-6-1920. By this will he gave a life estate to Ram Piari and directed that Onkar Nath, Brij Kishore, Shyam Kishore and Rup Kishore would succeed to the estate after her death. The four sons of Ram Piari, therefore, obtained a vested remainder in the property while Ram Piari received only a life estate. Seth Jai Dayal died in 1922. Ram Piari relinquished four-fifths of the share in favour of her sons by two deeds of relinquishment, one dated 29-7-1930 and the other dated 27-11-1942. By these deeds of relinquishment the four sons including the plaintiff-appellant, became the owners "in praesenti" of four-fifths of the property and were no doubt agriculturists since 1930 but the mortgages having been executed in the year 1928 the deeds of relinquishment could not make them agriculturists retrospectively. For the purposes of determining whether they were agriculturists on the date of the loan, the relinquishment deeds cannot be taken into consideration.

8. An agriculturist is defined in S. 2 of the Act as a person who pays land revenue, local rate or rent. The word "pays" shows that the liability for payment must be "in praesenti". The estate was in the possession of Ram Piari at the date of the loans. She was alone liable to pay revenue, local rate or rent. It could not be said that her sons who hold a vested remainder and would have come into possession of the property on her death also paid any land revenue, local rate or rent. In our opinion a person who holds a vested remainder in the property and who has not yet come in possession of the property cannot be said to be an agriculturist under the Agriculturists' Relief Act. The plaintiff was, therefore, not an agriculturist on the date of the loans.

9. The evidence with regard to the tenancy holding which stood in the name of Onkar Nath in the year 1928 to show that it was a joint family holding is contradictory. While the plaintiff alleges that the holding standing in the name of Onkar Nath was held by him on behalf of all the members of the family, because all were members of a joint Hindu family, Brij Kishore has sworn that it was not a joint family tenancy. In the case of a tenancy standing in the name of one of the members of a joint Hindu family, the presumption is that the person in whose name the tenancy stands is the person who is liable to pay rent to the landlord. Assuming that it can be proved that the tenancy is a joint family tenancy we do not think that the plaintiff has succeeded in establishing this in the present case. We, therefore, agree with the Court below that the plaintiff was not an agriculturist on the date of the loan by virtue of the tenancy which stood in the name of Onkar Nath.

10. As regards the plaintiff's allegation that he was merely a surety in the transactions relating to the three mortgages, we may state that in the mortgage deeds executed by Ram Piari and her sons including the plaintiff, there is no indication whatsoever that the sons of Ram Piari were merely her sureties. The mortgagees may not have advanced any loan to Ram Piari alone having regard to the fact that she was merely a life holder. They accordingly advanced the loan not to Ram Piari alone but also to the sons who together represented the entire estate. There is, therefore, no reason to think that the plaintiff and his brothers were merely sureties. This being so, the third ground on which the plaintiff claims that he is entitled to sue also fails.

11. There is no force in these appeals. They are dismissed with costs.