

(1932) 06 AHC CK 0039
In the Allahabad High Court

Shri Kishan Lal and Others

APPELLANT

Vs

Bijai Singh and Others

RESPONDENT

Date of Decision : 07-06-1932

Acts Referred:

Agra Tenancy Act, 1926 — Section 3(2)
Transfer of Property Act, 1882 — Section 52

Citation : AIR 1932 All 701 : (1932) ILR (All) 998

Hon'ble Judges : Sulaiman, C.J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sulaiman, C.J.—This is a defendants' appeal arising out of a suit brought by the land-holder for a declaration that the property in dispute, which is a grove land, was not liable to be sold in execution of a money decree against the landholder's grove-holder and for possession of the property. In substance the plaint is for the ejectment of the purchaser of the grove on the allegation that such a transfer was invalid and the land-holder was entitled to recover possession of the grove. The defendant pleaded that the grove was transferable as there was no custom prohibiting such a transfer. There was no plea taken that the civil Court had no jurisdiction to entertain the suit. The plaintiff however put forward the case that there was a custom prohibiting transfers of groves. The suit was instituted on 6th September 1927, after the coming into force of the new Tenancy Act, and the auction sale of the grove also took place shortly after the coming into force of the new Act. The first Court dismissed the suit but on appeal the lower appellate Court has given the plaintiff a decree against the auction-purchaser on the ground that there is a custom under which sales of grove are prohibited.

2. In second appeal the point is taken that the civil Court had no jurisdiction to entertain the suit. As the point goes to the root of the matter and is one of jurisdiction, and as an appeal would lie to the Commissioner if a suit were filed in the Revenue Court, we are bound to entertain this objection if it is valid. The

question of costs however is another matter. In Section 3(2), Agra Tenancy Act, "land" means land which is let or held for agricultural purposes, or as grove-land or for pasturage. It is clear that a grove under the new Act is land within the meaning of the Act. It is also clear that u/s 197 (a) a grove-holder is a non-occupancy tenant. It follows that u/s 3, 01. (8) a grove is a holding. On the plaintiff's own showing there is a custom under which transfers are prohibited, with the result that no transfer can take place u/s 197 (b). It follows that the holding would be non-transferable u/s 33 and also u/s 34 of the Act. It then follows that according to the case put forward by the plaintiff there has been a transfer in contravention of the two sections and it is therefore void u/s 34 (1). But Section 82 provides that if a tenant transfers his holding or any portion thereof contrary to Sub-section (1), Section 34, both he and any person who may have obtained possession of the whole or any portion of the holding in pursuance of any such attempted illegal transfer, shall be liable to ejectment at the suit of the landholder, and to every such suit both the tenant and the transferee shall be made parties.

3. It is therefore obvious that if Section 82 were applicable to the transfer of a grove in execution of a decree and were not confined to voluntary transfers by the tenant, the land-holder can sue both the tenant and the transferee in the Revenue Court. It would then follow that adequate relief could be claimed in the Revenue Court. As a suit for such relief would be expressly provided for in Section 82, no other Court but the Revenue Court can take cognizance of such a suit. This is made clear by Section 230. The explanation to that section shows that if the cause of action is one in respect of which adequate relief might be granted by the Revenue Court, it is immaterial that the relief asked for from the civil Courts may not be identical with that which the Revenue Court could have granted. The learned counsel for the respondents however contends that the provisions of Section 82 cannot apply to a sale in execution of a decree. There is no doubt that if the words were to be taken too literally, there may be some force in this contention, but it seems to us contrary to the general policy of the legislature, as indicated in the various sections of the Act, to hold that there is a distinction between a voluntary and an involuntary transfer in Section 82. After all both are transfers of a tenant's holding and there is no reason why in the case of a voluntary transfer the land-holder should be bound to sue in the Revenue Court, whereas in the case of an involuntary or compulsory transfer he should go to a civil Court. Under the new Act provision has been made for institution of suits by land-holders against tenants and their representatives in the Revenue Courts only.

4. We may also point out that a similar expression occurs in Section 52, T.P. Act, where the words are "the property cannot be transferred by any party to the suit." It has been held in numerous cases and there is now a consensus of opinion that the word "transfer" in that section is wide enough to cover both voluntary and involuntary transfers. It may also be pointed out that for the purpose of declaring that a non-occupancy tenancy is not transferable, Section

23(1) would have been sufficient. Nevertheless the legislature has gone on to provide in Section 34 that every transfer made by a tenant in contravention of the provisions of this Act shall be void. We think the legislature could not have intended to leave out involuntary transfers from the scope of this provision. If a private transfer is void so must be an involuntary transfer. The intention seems to be that where the transfer is void it cannot be validated by the consent of the land-holder. We are therefore of opinion that Section 82 applies to this case and although the transfer was by means of a sale in execution of a decree against the tenant, the remedy of the land-holder was to sue in the Revenue Court u/s 82, Tenancy Act impleading both the tenants and his transferee. We may point out that Section 82 falls under Schedule 4, "group B, serial. No. 10, Tenancy Act, and an appeal in such a suit lies to the Revenue Court. In this view of the matter it is unnecessary to go into the question of custom. We therefore allow the appeal, set aside the decree of the lower appellate Court and send the case back to the Court of first instance with instructions to return the plaint for presentation to the proper Court.

5. The plea of jurisdiction was not taken in the written statement; it appears to have been urged only at the time of the arguments. The defendants should not be allowed their costs in the first Court. The trial Court found the point in favour of the defendants and the lower appellate Court has not considered it. the defendants will have their costs in the lower appellate Court and in this Court.