
(1916) 05 AHC CK 0050
In the Allahabad High Court

Tursi	Vs	APPELLANT
Mohan		RESPONDENT

Date of Decision : 16-05-1916

Acts Referred:

Citation : AIR 1916 All 280 : 35 Ind. Cas. 302

Hon'ble Judges : Walsh, J;Sundar Lal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

walsh, J.—I agree with the judgment of the Court below and . with the reason given therein. The contention of the appellant seems to me subversive of the whole legislation on this point and none of the authorities cited to us apply to this case. I would dismiss the appeal with costs.

Sundar Lal, J.

2. The only question in this case is, whether the suit as framed lies in a Civil Court and whether the judgment of the Board of Revenue, dated 6th March 1915, is conclusive of the question whether the defendant is or is not a lessee of the plaintiff. The facts of the case as they appear are as follows:--One Harkishen had three sons, Khanjan, Dale and Fateh. Khanjan died and the names of Dugar and Hulasi, sons of Dale, were recorded in his place. We finally find the name of Mohan, son of Fateh, plaintiff-respondent in the present case, recorded in respect of the holding. In 1907, the plaintiff sued for the ejectment of the defendant. The matter in controversy between them was settled by a compromise of 30th September 1907. That compromise was embodied in a decree of 3rd October 1907. Under that compromise the plaintiff paid a sum of Rs. 81 to the defendant and the latter became entitled to hold the cultivatory holding for five years. On the expiration of five years the plaintiff brought a suit for ejectment, alleging that on the facts stated the relationship of tenant and sub-tenant existed between him and the defendant. The Commissioner decided in favour of the plaintiff; but

the Board of Revenue on the 6th of March 1915 decided that the defendant was not the plaintiff's sub-tenant. The plaintiff has brought a suit now in a Civil Court on the allegation that the defendant is a trespasser. The first point in controversy is whether a suit so framed lies in a Civil Court. There is no section in the Tenancy Act which enables a suit so framed being brought in a Revenue Court, and I think the Court below has rightly decided that on the plaint so drawn up the suit lies in the Civil Court.

3. The next question is whether the observation of the Board of Revenue, that the relationship between the parties was that of co-lessees is conclusive. It is urged on behalf of the appellant that this observation is conclusive of that point. The plaintiff had sued for ejectment of the defendant on the ground that he was his sub-tenant. The only point directly and substantially in issue in that suit was whether the relationship of landlord and tenant existed between the parties. The only point on which that decision is *res judicata* is that there is no such relationship between them. As to what else the relationship was, was a matter not directly in issue. It was a subsidiary side issue. Any observation on the subsidiary side issue cannot be *res judicata*. The only point which the Revenue Court could decide was whether the relationship of landlord and tenant existed between the parties. Where a dispute is between a tenant and another person who alleges himself to be a co-tenant, the Revenue Court has no jurisdiction to decide the matter finally. It can only do so in a suit between landlord and tenant. I think the decision of the Court below was right, and I agree in dismissing the appeal with costs.

4. This appeal is dismissed with costs.