

Uma Shanker (dead) and Others

Vs

Sarabjeet (dead) by L.Rs. and Others

Civil Appeal No.2032 of 1979

(M. M. Punchhi, Sujata V. Manohar JJ)

23.01.1996

JUDGEMENT

Mrs. SUJATA V. MANOHAR, J. :-

1.The respondent, Sarabjeet, was originally the sub-tenant of one Damri Lal, the predecessor in title of the present appellants, in respect of lands situated within the limits of the Municipal Board, Bhadohi, Tehsil Gyanpur, which are the subject matter of this appeal. These lands, at all material times, were governed by the provisions of the Banaras State Tenancy Act, 1949.

2. Damri Lal had brought a suit being Suit No. 46 of 1955 against the respondent for ejectment of the respondent from the suit lands under Section 154 of the Banaras State Tenancy Act, 1949, in the Court of the Sub-Divisional Officer, Bhadohi. On 1-10-1955 the parties compromised the suit and a consent decree was accordingly passed on 4-11-1955. The compromise which is dated 1-10-1955 and is signed by both the parties including the respondent, states that the respondent relinquishes his rights in the land in favour of Damri Lal. The respondent who is the defendant there, has stated : "I have no concern in the land in dispute and the crops standing thereon from today's date. A decree in favour of the plaintiff against the defendant be passed..... " Accordingly a consent decree was passed.

3. According to the appellants, under this compromise decree possession of the said lands was surrendered by the respondent to Damri Lal. They further contend that the respondent interfered with Damri Lal's possession in July 1957. As a result, proceedings were initiated under Section 145 of the Criminal Procedure Code at the instance of Damri Lal. These proceedings finally concluded on 30-3-1959. The Sub-Divisional Magistrate, Bhadohi, held that the respondent was in possession of the said lands. As a result, immediately thereafter on 12-4-1959, a suit was filed by Damri Lal under Section 159 of the Banaras State Tenancy Act before the Revenue Court for ejectment of the respondent and for recovery of possession. Damri Lal, however, died during the tendency of the suit and the present appellants were brought on the record of the suit in his place. The suit remained stayed for several years. Ultimately, the trial Court, by its judgment and order dated 26-7-1969, held that the plaintiffs (appellants herein) were entitled to succeed and passed a decree in their favour.

4.It was contended before the Revenue Court that the suit was barred under Section 47 of the Civil Procedure Code because the proper remedy was for the appellants to have executed the compromise decree which they had obtained in the earlier proceedings. A separate suit was barred. This contention was negated by the trial Court. It held that the appellants were dispossessed after the

consent decree and as a result of the order passed under Section 145 of the Criminal Procedure Code. Hence a fresh cause of action had accrued to the plaintiffs and they were entitled to maintain the suit.

5. In the meanwhile, some time after the compromise decree, the respondent had filed suit No. 709 of 1956 against Damri Lal in the Munsif's Court at Gyanpur for setting aside of the compromise decree on the ground of fraud. The trial Court held that the compromise was valid and binding between the parties and this conclusion was ultimately upheld by the High Court in its judgment and order dated 28-4-1967. The attempt of the respondent to get out of the compromise decree had, thus failed. It seems that in the interregnum, he took possession of the lands which resulted in proceedings under Section 145 of the Criminal Procedure Code at the instance of Damri Lal. It was, however, held there that the respondent was in possession of the land. This compelled the appellants to file the suit which has ultimately come before us.

6. After the judgment of the trial Court dated 26-7-69 in that suit decreeing the plaintiff's suit for possession, an appeal was filed by the respondent before the Addl. District Judge at Varanasi who allowed the appeal and set aside the decree passed by the Revenue Court. The District Court held that the suit under Section 159 of the Banaras Tenancy Act was barred under Section 47 of the Civil Procedure Code. It held that although the respondent had surrendered his rights over the lands under the compromise decree, that decree was not executed. The respondent had not been dispossessed under the compromise decree. The remedy of the appellant was to execute the compromise decree. In Second Appeal, the High Court has confirmed this conclusion holding that in view of the provisions of Section 47 of the Civil Procedure Code the suit was not maintainable.

7. Both the Courts below seem to have ignored the terms of the compromise decree which records that the respondent has given up from that day all rights over the land including the standing crops thereon, clearly implying that the possession of the land was given to Damri Lal from the date of the compromise. It is only on this basis that criminal proceedings under Section 145 of the Criminal Procedure Code at the instance of Damri Lal can be understood. It was on account of the dispossession of Damri Lal some time after the compromise decree that it became necessary for him to resort to proceedings under Section 145 of the Criminal Procedure Code. The respondent was at this time taking steps to set aside the compromise decree by filing a suit. As the findings in the criminal proceedings showed the respondent in possession, the present suit was filed by Damri Lal.

8. On assessment of evidence, the trial Court was right in coming to the conclusion that on account of the dispossession of Damri Lal after the compromise decree, a fresh cause of action arose in his favour. There was no occasion for Damri Lal to have the compromise decree executed since he has given possession under the compromise decree. It was his dispossession thereafter which gave rise to the next round of litigation. Such litigation is not barred under Section 47 of the Civil Procedure Code. Section 47 bars a separate suit only in respect of questions relating to the execution, discharge or satisfaction of the decree. If there is a subsequent dispossession after the decree for possession is complied with, a suit to obtain possession is not barred simply because there was an earlier decree obtained by the plaintiff for possession which decree had been complied with. In fact there will be no question of executing the earlier decree when it has already been complied with.

9. Under Section 159 of the Banaras State Tenancy Act, 1949, a person taking possession of a plot of land without the written consent of the person entitled to admit him to occupy his plot and other wise than in accordance with the provisions of law is liable to ejection under that section. The present suit was filed by the appellant under Section 159 of the Banaras State Tenancy Act, 1949.

The High Court was not right in holding that the suit was not maintainable.

10. Learned Advocate for the appellant has drawn our attention to a decision of this Court in Brij Kishore Prasad Singh v. Jaleshwar Prasad Singh, AIR 1973 SC 1130. In that case a decree for partition had been obtained by the parties on compromise. Certain property came to the share of one Kishundeo Singh. But defendants 1 and 2 had been allowed to continue in possession with the permission of Kishundeo Singh, acknowledging the title of Kishundeo Singh to this property. The partition deed was not drawn up as the necessary stamp paper was not produced. The Court, in a subsequent suit which was filed by Kishundeo Singh for khas possession, held that the suit was not barred by Section 47 of the Civil Procedure Code. Under the compromise, Kishundeo Singh was in constructive possession of the property and his suit for recovery of khas possession was not barred. The present suit is on a stronger footing because under the compromise decree, possession was handed over to Damri Lal of the property in question. On his subsequent dispossession Damri Lal was entitled to file a suit for possession on the basis of the title which he had acquired under the compromise decree which has been held to be valid and binding between the parties.

11. The appeal is, therefore, allowed. The judgment and decree of the High Court is set aside and the judgment and decree of the trial Court is restored with costs.

Appeal allowed.