LAHORE HIGH COURT

Sham Singh

Vs

Amarjit Singh

(Tek Chand, J.)

12.06.1930

JUDGMENT

Tek Chand, J.

1. The plaintiff is admittedly the owner of the land in dispute, which was held by one Bhalla as occupancy tenant under him. Bhalla died many years ago and his widow Mt. Jassi succeeded him as occupancy tenant for life. On Mt. Jassi's death in 1919 the defendants, claiming to be collateral heirs of Bhalla, took possession of the land and got themselves recorded as occupancy tenants under the plaintiff. The plaintiff was a minor at that time. He has now attained majority and has sued for possession alleging that the defendants were not related to Bhalla deceased, that the land in question was not occupied by the alleged common ancestor Dharman and that the defendants were holding the land as trespassers.

2. The defendants pleaded that they were collaterals of Bhalla and entitled to succeed to the tenancy under Section 59, Tenancy Act. They also urged that the suit was not cognizable by the civil Court under Section 77, Punjab Tenancy Act. The Courts below have found against the defendants on all these points and have decreed the suit.

3. Before us an attempt was made to contest the findings of the learned District Judge that the defendants were not related to Bhalla deceased and that the alleged common ancestor had never occupied the land. But the findings of fact recorded by the learned District Judge are based on evidence on the record, and cannot be challenged in second appeal.

4. The only question which requires decision is whether the civil Court had jurisdiction to entertain and try the suit. In support of his contention that the suit was cognizable by revenue Courts only, the learned Counsel for the appellants has referred us to Clause (d), Sub-section 3, Section 77, Punjab Tenancy Act, and the proviso to that Sub-section. In my opinion these provisions of the law have no application whatever to a case of this kind. Clause (d), bars the jurisdiction of civil Courts to take cognizance of suits by a tenant to establish a claim to a right of

occupancy, or by a landlord to prove that a tenant has not such a right.

5. It was held in *Mewa Singh v. Nathu*[1] and has been settled law ever since, that this

[1][1894] 22 P.R. 1894

clause does not apply to a suit by the plaintiff as landlord of certain land lately held by a tenant who died lawaris alleging that the defendants without title had taken possession of the land as it was not a suit by a landlord to prove that a tenant had not a right of occupancy, the plaintiff not alleging or admitting that the defendant was tenant at all, but on the contrary that he was a mere trespasser.

6. Conversely, it was laid down in *Wazira v. Harjalu*[2] that a suit by a collateral heir of a deceased occupancy tenant to recover possession of his holding from the landlord on the ground of inheritance is quite distinct from a suit covered by this and other sections of the Tenancy Act, and is cognizable by a civil Court. It is obvious that the bar under Clause (d) is applicable to those cases only in which the relationship of landlord and tenant is admitted and the object of the suit is to determine the nature of the tenancy i.e., whether the status of the tenant falls under Sections 5, 6, 7 or 8 of the Act. In a suit like the one before us the point for decision is not the nature of the tenancy, but whether the defendant is related to the deceased tenant and if so whether their common ancestor had occupied the land. If these questions of fact are established, the claimant ipso facto succeeds to the occupancy tenancy. But if they are decided against him, he is not a tenant at all.

7. This position has not been seriously questioned before us and counsel has not attempted to argue that *Wazira v. Harjalu [1890] 160 P.R. 1890(supra)* and *Mewa Singh v. Nathu*[2] were wrongly decided. He has argued that the proviso to Sub-section (3) which was enacted by Punjab Act 3 of 1912 has made a change in the law. A reference to the wording of the proviso however shows that all it lays down is that where in a suit cognizable by and instituted in a civil Court it becomes necessary to decide any matter which can under the Sub-section be heard and determined only by a revenue Court, the civil Court shall endorse upon the plaint the nature of the matter for decision and return the plaint for presentation to the Collector. The practical effect of the proviso is that, whereas before its enactment civil Courts were prohibited from trying those suits only in which the question raised in the plaint ex facie fell within one or other of the clauses of sub-8. 3, Section 77, their jurisdiction is now barred in those cases also in which on the averments in the plaint the suit is properly triable by a civil Court, but the defendant's pleas raise a question which, under this Sub-section is to be determined by revenue Courts only. On such a plea being raised and the Court finding that it has become necessary to decide it, it must stay its hands and return the plaint for presentation to the revenue Court. In the case before us neither the plaint nor the pleas raise a question falling within Clause (d) or any other clause of Sub-section 3, Section 77 and therefore the proviso does not come into operation.

8. The question of the applicability of the proviso to a case like this arose directly in *Ghulam v.*

Jowala[3] where Shah Din, J., after discussing the previous cases bearing on the point, held that a suit of this kind was cognizable by civil Courts. The same view has been taken by Broadway and Fforde, JJ., in *Jaikaran v. Nathu Ram*[4] The only case in which a contrary view has been expressed is a Single Bench decision of Abdul Raoof, J., in *Parabh Dayal v. Mt. Radho*[5]. A perusal of his judgment shows however that the

[2][1890] 160 P.R. 1890 [3][1918] 103 P.R. 1918 [5] A.I.R. 1924 Lah. 636
[3][1894] 22 P.R. 1894 [4] A.I.R. 1926 Lah. 338

learned Judge was inclined to agree with the conclusion of Shah Din, J., but he felt himself bound by a previous Division Bench decision of the Chief Court reported as *Wadhdwa v. Mt. Hassi*[6] I have examined that ruling and with all respect to the learned Judge, feel constrained to say, that it was clearly distinguishable from the case before him. In *Wadhawa v. Mt. Hassi [1915] 73 P.R. 1915(Supra)* certain tenants had been declared to be panahi or "protected" for a term of years before the enactment of the Tenancy Act of 1868 and on the strength of that declaration they claimed to have been occupancy tenants under Section 6, Act 16 of 1887. It is clear that the question for determination by the Division Bench related to the nature of the tenure of a person who admittedly held under another, and such a question obviously fell within Clause (d), Sub-section (3), Section 77, and therefore within the exclusive jurisdiction of revenue Courts. I have no doubt that the law was correctly laid down by Shah Din, J., in *Ghulam v. Jowala [1918] 103 P.R. 1918(Supra)*; and with his reasoning and conclusion I venture to express my wholehearted and respectful concurrence. I hold therefore that the suit was rightly tried in the civil Courts.

9. For the foregoing reasons I would dismiss the appeal with costs here and below.

Currie, J.

10. I concur.

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[6][1915] 73 P.R. 1915