
(1968) 03 AHC CK 0007

Allahabad High Court

Case No: S.A. No. 1323 of 1960

Dhani Ram and others

APPELLANT

Vs

Mangu and others

RESPONDENT

Date of Decision: March 12, 1968

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1
- Encumbered Estates Act, 1934 - Section 4
- Uttar Pradesh Tenancy Act, 1939 - Section 29

Citation: (1968) 38 AWR 394

Hon'ble Judges: V.G. Oak, C.J; R.S. Pathak, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

V.G. Oak, C.J.

This second appeal by Plaintiffs arises out of a suit for possession and damages. Dhani Ram and others brought the suit against Mangu and five others on these allegations.

2. The Plaintiffs owned zamindari property in a number of villages in district Bijnor. They applied u/s 4 of the Encumbered Estates Act. One Laik Ram creditor applied for appointment of a receiver. Accordingly, the Special Judge appointed a receiver to manage the zamindari property belonging to Plaintiffs. This property included plots, which were Khudkasht of Plaintiffs. On 29-6-1943 the receiver let out Plaintiffs' plots to Defendant Nos. 1 to 5 for a period of three years on an annual rent of Rs. 500/. On 5-7-1954 the Plaintiffs brought the suit to recover possession from Defendants and for damages on the ground that the Plaintiffs were Bhumidhars of the land and Defendants have no right to cultivate the land. Defendants pleaded that they were sirdars of the land in dispute. This portion was accepted by the trial court. The Plaintiff's claim was, therefore, dismissed. An appeal filed by the Plaintiffs was dismissed by the District Judge, Bijnor. Plaintiffs have, therefore, come to this Court in second appeal.

3. When the second appeal came up for hearing before a learned Single Judge, the question was raised before him whether the receiver was competent to execute the lease. The learned Judge thought that there was no clear authority of this Court on this question. He, the refore, referred the case to a larger Bench.

4. It was urged by Mr. Shanti Bhushan appearing for the Appellants that when the receiver is appointed by the court, the property does not vest in him. Consequently, he cannot execute leases with respect to the property in his charge. In support of this contention, he referred to a number of decisions of different High Courts.

In [Jacob Vs. Subramonia Iyer](#), . It was held that a court or receiver taking possession of a property in suit does not thereby derive any title to it, much less any interest in it, not even a right to possession, except for administering or managing or preserving it for the benefit of the party rightfully entitled to it; if so, there is no interest to transfer or to convey.

In [Karri Ramaya Naidu Vs. Karri Chilakayya Naidu](#), it was held that where a receiver was in possession of the suit lands on behalf of the contending parties who were asserting right to remain in possession and management of the property, the party who was given the land for cultivation by the receiver cannot contend that he is tenant under the receiver.

In Mahant Parshotam Das v. Frem Narain alias Prem Das alias Prem Sukh Das 1956 AWR 782 it was held by a Division Bench of this Court that where a party to a litigation who claims to be the owner or trustee of the property in dispute is allowed to cultivate the disputed property during the pendency of the litigation he cannot claim rights adversely to the person who is ultimately held entitled to the property. Cultivatory possession of such person does not create tenancy rights in his favour. In that case the court was anxious to avoid the creation of tenancy rights in Sir and Khudkasht plots in dispute. Uma Shanker, who claimed to be the Chela of Mahant Bhola Das was appointed receiver. Since he claimed to be the owner of the property, it was held that he could not subsequently claim to be a tenant in the same land. It was observed at page 784:

Where a party to a litigation who claims to be the owner or trustee of the property in dispute is allowed to cultivate the disputed property during the pendency of the litigation he cannot claim rights adversely to the person who is ultimately held entitled to the property.

In Upper Ganges Sugar Mills v. Khalil-ul-Rehman (1961) AWR 78 a certain company was in possession of the land in dispute from before 3-11-1948. It remained in possession thereafter by virtue of certain stay orders passed by the appellate courts. It was held by the Supreme Court that the company remained in possession in the same right in which it was in possession before the above date, and its possession thereafter cannot be said to be on behalf of the court.

In [Annapurna Dasi and Others Vs. Sarat Chandra Bhattacharjee and Others](#), it was held that when a receiver mortgages a property with the sanction of the court, he must be

taken to have represented the owners of the property.

In *Mahabir Das v. Udit Narain Verma and Ors.* 1938 Pat 613 it was held that a receiver appointed by the court to take charge of land during a suit regarding dispute between two persons asserting right as landlords is a landlord for the time being and any bonafide settlement made by him in the interest of the estate in the ordinary course of management is binding on the parties who would be decided to be rightful owner of the land.

5. Order XL of the CPC provides for appointment of receivers. Sub-rule (1) of Rule 1 of Order XL states:

Where it appears to the Court to be just and convenient, the Court may by order--

(a) appoint a receiver of any property....

(b) ...

(c) ...

(d) confer upon the receiver all such powers...and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

6. It will be seen that Under Clause (d) of Sub-rule (1) of Rule 1 of Order XL of the Code of Civil Procedure, it is open to a receiver to execute documents under the directions of the Court.

7. In the present case the learned District Judge has pointed out that the Appellants were at first given the option to cultivate the land. When they declined the offer, lease was granted to Respondents with the approval of the Court. This action was presumably Under Order XL of the Code of Civil Procedure.

8. It may be that property does not vest in the receiver in the sense that property vests in the official receiver under the Provincial Insolvency Act. Nonetheless the receiver has ample power of management as laid down in Order XL, Rule 1 of the Code of Civil Procedure. Under the power of management, the receiver may execute leases in proper cases. In the present case the receiver did execute leases in favour of Defendant Nos. 1 to 5 in the year 1943. The present Appellants do not appear to have challenged those leases at any time between 1943 and 1954. The trial Court has remarked that the Plaintiffs themselves applied that the receiver should be directed for realisation of rents. That remark suggests that the Plaintiffs accepted the position that the Defendants were tenants of the land in dispute. It is now too late to question the Defendants' status as tenants. As explained by the two courts below, Defendant Nos. 1 to 5 became hereditary tenants u/s 29, UP Tenancy Act. Consequently, the Defendants became sirdars u/s 19 of UP Act I of 1951. The Plaintiffs claim to recover possession was rightly dismissed.

9. The second appeal is dismissed with costs.