
(1926) 01 AHC CK 0005

Allahabad High Court

Case No: None

Param Sukh and Another

APPELLANT

Vs

Dambar and Another

RESPONDENT

Date of Decision: Jan. 8, 1926

Citation: AIR 1927 All 102

Hon'ble Judges: Sulaiman, J

Bench: Division Bench

Judgement

Sulaiman, J.

This is a plaintiffs' appeal arising out of a suit for a declaration that they are the occupancy tenants of the holding and are not the sub-tenants of the defendants. Prior to the institution of the suit the defendants had filed a suit, in the revenue Court against the plaintiffs alleging that the defendants were the tenants-in-chief and that the plaintiffs were the sub-tenants. That suit admittedly resulted in a decree which was affirmed by the Board of Revenue. The result is that the plaintiffs have been ejected by the revenue Court. After the passing of the revenue Court decree the present suit in a civil Court was instituted for the declaration afore mentioned. Both the Courts below have thrown out the suit, on the ground that it is barred.

2. The learned Advocate for the appellants contends that the ejectment by the revenue Court proceeded on the assumption that the plaintiffs were holding the land u/s 34 of the Tenancy Act and were not the tenants of the defendants but even u/s 34, a person occupying the land without the consent of the landlord is liable for the rent of the land. It is true that he cannot be deemed to hold the land for the purpose of acquiring occupancy rights, but nevertheless he is liable to pay rent. When he is liable to pay rent then u/s 2(5) he is a tenant. The revenue Court, therefore, had jurisdiction to eject him. Having been ejected by the revenue Court he cannot now be allowed to maintain a suit in the civil Court for a declaration that in spite of the ejectment decree he is still a tenant-in-chief. This case is covered by the recent Full

Bench case of Fateh Singh v. Gopal Narain Singh A. 1. Rule 1925 All. 637. The appeal is dismissed under Order 41, Rule 11, Civil P.C.