Deokinandan Pandey Vs Ram Chandra Tewari and Others

Court: Allahabad High Court

Date of Decision: Aug. 31, 1937

Acts Referred: Agra Tenancy Act, 1926 â€" Section 22
Civil Procedure Code, 1908 (CPC) â€" Section 115

Citation: AIR 1938 All 17 : 173 Ind. Cas. 180

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This is an application for revision u/s 115, Civil P.C., against the order passed by the District Judge of Benares confirming that of a munsif of

that district, who returned the plaint filed in his Court by the applicant for presentation to the proper Court, that is the Revenue Court. The plaintiff

alleged in his plaint that he and defendants 2 to 6 are members of a joint Hindu family owning certain fixed-rate tenancy lands specified at the foot

of the plaint and that defendants 2 and 3 conspired to alienate the property in suit fraudulently without consideration and without legal necessity in

favour of their relative, defendant 1, to the detriment of the plaintiff. The plaint also alleges that defendants 4 to 6 are the other members of the

family. As a matter of fact, defendants 4 and 5 are the sons of defendant 2 and defendant 6 is the nephew of defendant 2. The relief originally

claimed by the plaintiff was cancellation of a sale deed dated 18th August 1934 executed by defendants 2 and 3 in favour of defendant 1 and for a

declaration that the same is not binding on the share of the plaintiff which, according to the pedigree appended to the plaint, comes to half. It was

further prayed that in case the Court found that the property in dispute is no longer in possession of the plaintiff, a decree for possession be passed

and defendant 1 be ejected. The suit was contested by defendants 2 and 3, inter alia, on the ground that the Civil Court has no jurisdiction to

entertain it.

2. Before the trial Court returned the plaint for presentation to the proper Court, the plaintiff made an application for amendment praying that a

reference to the plaintiff''s half share in the relief be omitted so that the relief that might be granted to him was a declaration that the deed in question

was inoperative. The munsif upheld the defendants'' plea as regards jurisdiction and ordered the plaint to be returned for presentation to the proper

Court. It did not allow the amendment prayed for by the plaintiff on the ground that since a Civil Court had no jurisdiction to try the suit, it was not

competent, to allow amendment of the plaint. The plaint was accordingly returned, but the plaintiff did not file it in the Revenue Court and preferred

to appeal to the District Judge, questioning the correctness of the view taken by the munsif. In the main, two questions were argued before the

learned District Judge. It was contended that, having regard to the nature of the suit, the Civil Court alone has jurisdiction to entertain it and that the

munsif was wrong in holding that the suit not being within his jurisdiction he was not competent to allow amendment of the plaint. The learned

District Judge agreed with the Court of first instance and held on both the points against the plaintiff who has come in revision to this Court.

3. A preliminary objection is taken by learned Counsel for the opposite party that no revision lies. The contention is that the lower Appellate Court

had jurisdiction to hear the appeal and that if in deciding that appeal it has taken an erroneous view of law on which his finding as to jurisdiction is

based, he cannot be considered to have acted without jurisdiction or to have failed to have exercised a jurisdiction vested in him or to have acted

illegally or with material irregularity in the exercise of his jurisdiction, even if his view on a question of law is erroneous. Reliance is placed on

Panchanand Pandey v. Ram Parpan Tewari Civil Revn. No. 43 of 1936. In that case, the Court of first instance had held that it had no jurisdiction.

On appeal the Civil Judge held, on his view of the law applicable to the case, that the Civil Court had jurisdiction. Accordingly the order of the first

Court was reversed and the case was remanded for disposal on the merits. In the case before us the position is quite different. The munsif held that

he had no jurisdiction to entertain the suit and on appeal the Civil Judge has taken the same view. The question before us is whether the munsif had

jurisdiction to entertain the suit filed in his Court. The question involved is directly one relating to his jurisdiction and we have no doubt that the High

Court has power u/s 115 to interfere in revision. Our view is fully supported by Badami Kuar v. Dinu Rai (1886) 8 All. 111 a case decided by a

Full Bench of this Court consisting of five Judges. Accordingly we over, rule the preliminary objection and proceed to consider the revision on its

merits.

4. Before considering the main question involved in the case, we think it necessary to dispose of a subsidiary point in the case. An application was

made by the plaintiff to the Court of first instance asking for permission to amend his plaint by deleting certain words from the claim of relief which

referred to the half-share alleged to belong to the plaintiff. The plaint, if amended, will claim the relief that the sale-deed dated 18th August 1934 be

declared to be absolutely inoperative, that is to say it is invalid not only as against the plain, tiff''s interest in the property in dispute, but against the

interests of the entire joint family of which the plaintiff claims to be a member. The Munsif held that as he had no jurisdiction to entertain the suit, he

was not competent to allow the amendment prayed for by the plaintiff. This view may be technically right but is of no practical importance if the

amended plaint would bring the suit within the jurisdiction of the Civil Court. Assuming that the plaint, as originally filed, disclosed a suit not

cognizable by the Civil Court, and assuming also that the amendment would have made it cognizable by such a Court, it was open to the plaintiff to

amend it as soon as it was returned to him for presentation to the proper Court and to represent it in the same Court which was bound to entertain

it, as ex hypothesi the suit would have become one which the Civil Court was competent to decide. For all practical purposes therefore, we should

consider in the present revision whether the plaint, if the same had been allowed to be amended, would have dis. closed a suit which the Civil

Court had jurisdiction to decide.

5. Turning to the main question in the case, we would first observe that the suit is of the typical kind in which a member of a Hindu joint family

seeks to have an alienation made by another member there of set aside and to have it declared that the same does not affect the family property,

which in spite of it continues to belong to the family, and that in ease the property has passed out of the family it be restored to it. Suits of this

description are frequently instituted in Civil Courts, and we may safely say that they are of very rare occurrence in a Revenue Court. The question

which we have to consider is whether a suit must be heard and decided by a Revenue Court only because the property alienated under the sale

deed in question is a fixed-rate tenancy.

6. Section 22, Agra Tenancy Act, declares that the interest of a permanent tenure-holder and of a fixed-rate tenant is both heritable and

transferable. Other tenancies, such as exproprietary tenancy, occupancy tenure and non-occupancy tenure, are not transferable, and though

heritable are subject to special rules of devolution which are wholly inconsistent with survivorship which is a peculiar feature of joint Hindu families.

A fixed rate tenancy, on the other hand, can pass like proprietary tenures by survivorship. After the fixed rate tenancy has made one or two

descents from the original acquirer who became the ancestor of his descendants, it becomes part of the joint family property and is subject to the

rule of survivorship. The tenancy at that stage belongs not to any one or two individual members of the family but to the entire joint family which vis

a vis the landholder is the tenant. The expression ""tenant"" is defined in Section 3(6) us a person by whom rent is, or but for a contract, express or

implied, would be payable. Where a fixed-rate tenancy belongs to a joint Hindu family, rent is payable by the family as such and it is the family that

should be considered to be collectively the tenant in respect thereof. It is not correct to say that the component parts of the joint family are

cotenants between themselves or vis a vis the landlord. None of them has a defined share which he can call his own. Whatever interest he has in

the tenancy is liable to fluctuation. It may increase or decrease and may even lapse.

7. This being the position of individual members of the joint Hindu family to whom a fixed rate tenancy belongs, the next question to be considered

is whether if one of the members institutes a suit for Betting aside an alienation made by another member and for a declaration that, such alienation

does not affect the interest of the family including that of the plain. I tiff, Sections 99 and 121, Tenancy Act, read with Section 230 and Schedule 4

of the same Act, exclude the jurisdiction of the Civil Court which is otherwise the proper Court, to decide the questions arising out of such cases.

Section 99 provides:

Any tenant or rent-free grantee ejected from or prevented from obtaining possession of his holding or any part thereof, otherwise than in

accordance with the provisions of this Act, by (a) his landholder or any person claiming as landholder to have a right to eject him, or (b) any

person claiming through such landholder or person, whether as tenant or otherwise, may sue the person so ejecting him or keeping him out of

possession : (i) for possession of the holding; (ii) for compensation for wrongful dispossession; and (iii) for compensation for any improvement he

may have made.

8. Section 121 which is closely allied to Section 99 provides for declaratory suits by a tenant against his landholder or persons claiming through

him as Section 99 does in respect of the reliefs therein mentioned. Before any of these sections can apply, it must be found that the plaintiff is a

tenant"". If the plaintiff cannot be correctly described as a tenant with reference to the land in dispute, neither Section 99 nor Section 121 can have

any application. As we have already shown, the fixed rate tenancy in dispute in the present case belongs to the entire joint family of which the

plaintiff is a member. It is the family and not the plaintiff that should be considered to be the tenant thereof. The plaintiff and the alienating members

of the family are not co-tenants in the strict sense of the term. The correct description of the plaintiff and the alienating members is that they are

members of a coparcenary body to whom the fixed rate tenancy belongs. It is true that so far as each of them has an interest in the fixed rate

tenancy, it is derived from the same landholder, but this is a different matter altogether. The first requisite for the application of Sections 99 and 121

is that the suit must be by the tenant. As already indicated, the plaintiff cannot be considered to be the tenant of the fixed-rate tenancy which has

been alienated by defendants 2 and 3 in this case. Accordingly we hold that the present suit is not such as is contemplated by Sections 99 and 121,

Agra Tenancy Act, which in our opinion are wholly inapplicable to cases in which one member of a joint Hindu family impugns the action of

another member with reference to the family property which may include fixed rate tenancy.

9. In the course of the arguments before us numerous cases were cited by learned Counsel on both sides. We do not consider it necessary to

discuss in detail every one of these cases. It is enough to point out that in none of them fixed rate tenancy belonging to a joint Hindu family was

involved. We have not been referred to any case in which a view in conflict with that we are taking has been adopted. In view of the case we have

taken, this revision must succeed. It is accordingly allowed. The orders of the lower Courts are set aside and the case is sent back to the Court of

first instance with a direction that it be restored to its original number and be disposed of according to law. The applicant shall have his costs in this

Court and in the lower Appellate Court. Costs of the first Court shall abide the result. We may note that we allow the plaintiff to amend his plaint in

terms of the application to which reference has been made in the body of this judgment.