Ludur Vs Ram Raj and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Sept. 16, 1953

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 9
Limitation Act, 1908 â€" Section 29
Uttar Pradesh Tenancy Act, 1939 â€" Section 183

Citation: AIR 1954 All 171 : (1953) 23 AWR 588

Hon'ble Judges: Randhir Singh, J; Beg, J

Bench: Division Bench

Advocate: B.K. Dhaon, for the Appellant; N. Bannerji, for the Respondent

Final Decision: Dismissed

Judgement

Randhir Singh, J.
This appeal originally came up for hearing before a learned single Judge of this Court who thought that the points

involved in this case reserved consideration by a Division Bench. The case was therefore listed before this Bench. It arises out of a suit instituted by

the plaintiffs respondents for possession of some plots of land which were a part of the tenancy holding of the plaintiffs but which had been taken

possession of unlawfully by the defendant appellant. The defendant contested the suit on the ground that the plots were given to him under a private

partition and as such he was a tenant of the plots. Pleas of limitation and jurisdiction were also raised and it was contended that the suit should have

been instituted in the revenue court and that it was barred by limitation.

2. As the defendant raised a plea of tenancy, an issue about tenancy was referred to the revenue Court. The revenue Court before deciding the

issue remitted to it by the Civil Court, impleaded the landlord. The revenue Court ultimately came to the conclusion that the defendant was not a

tenant and this finding was sent back to the Civil Court. On receipt of this finding the Civil Court decreed the suit. It also found that the suit was

within the cognizance of the Civil Court and was not barred by limitation. The defendant went in appeal to the District Judge. The Civil Judge who

heard the appeal concurred with the findings of the trial Court and dismissed the appeal. The defendant has now come up in second appeal.

3. Two points have been urged on behalf of the appellant. Firstly it was urged that the suit was covered by Section 183, U. P. Tenancy Act and as

such the suit should have been instituted in the revenue Court and not in the civil Court. Section 183 was amended in 1947, and after the

amendment there is no doubt that a suit such as the one which has been instituted by the plaintiffs, ought now to be instituted in the revenue Court.

The suit which has given rise to the present appeal, however, was instituted in 1945 and we have to see whether such a suit could be instituted in

the civil Court under the provisions of the Act as it stood in 1945.

There has been a conflict of opinion between the Allahabad High Court and the erstwhile Oudh Chief Court on a matter of jurisdiction in such

suits. The Allahabad view was that a suit by a tenant could not be instituted in the Civil Court and that the only forum for such a suit was the

revenue Court, vide -- D.N. Rege, Solicitor through Gopal Lal Mukhtaram Vs. Kazi Muhammad Haider and Another, . The matter came up

before a Full Bench of the Oudh Chief Court in 1947 and it was held that it was open to a tenant to institute a suit against a trespasser in the Civil

Court, vide -- AIR 1947 104 (Oudh) The plaintiffs belonged to Oudh and were governed by the laws prevailing in Oudh. We are, therefore, not

concerned with the disagreement on this point between the two Courts and on the view of the Oudh Chief Court the plaintiffs were entitled to

maintain the suit in the Civil Court. Originally it was argued on behalf of the appellant that even before the amendment of Section 180, the suit

should have been instituted in the revenue Court inasmuch as the defendant in his defence pleaded that he was a tenant and the landlord also, when

he was impleaded in the revenue Court, supported him. Primarily the forum is to be decided on the allegations made in the plaint. It may also

perhaps be conceded that a finding on the plea raised in defence may also affect the jurisdiction, but mere allegations made by a defendant should

not be enough to decide the forum of a suit. Learned counsel for the appellant did not, therefore, towards the close of his arguments, press this

point.

4. The other point which is more important is about limitation. The present suit was instituted on 27-8-1945, and it was mentioned in the plaint that

the defendant had entered into wrongful possession of the plots in dispute without rights or title sometime in September, 1942. This suit was,

therefore, instituted about three years after the cause of action for the suit arose. The U. P. Tenancy Act has provided a period of limitation for

such suits to be brought under the U. P. Tenancy Act and the period provided for such a suit u/s 180 or 183, U. P. Tenancy Act is two years in

certain cases, and it has been argued that this period of limitation should be made applicable to all suits whether brought under the U. P. Tenancy

Act or under the CPC by tenants so long the suits are covered by the description given in the Fourth Schedule, Group B, appended to the U. P.

Tenancy Act.

The argument on behalf of the respondents on this point is that this special period of limitation provided in the U. P. Tenancy Act is limited in its

application to suits brought under the U. P. Tenancy Act and not to suits brought under any other provision of law. No authority bordering on the

question in issue has been cited, but the learned counsel for the appellant has cited some rulings to show that the limitation provided in a special

enactment shall override the enactment in the Indian Limitation Act. There can be no dispute that where a period of limitation provided by the

Indian Limitation Act for a certain suit or suits has been varied or curtailed by any special enactment, the period of limitation provided by the

special enactment shall prevail, and the period of limitation provided in the Indian Limitation Act would not be available. The main point for

decision, therefore, is whether the special enactment relied on by the learned counsel for the appellant hag curtailed the period of limitation for

certain kinds of suits to be brought under the Code of Civil Procedure. The argument for the learned counsel for the appellant is that we should

look to the description of the suit given in the schedule and not to the section under which the suit has to be brought.

We are unable to agree with this contention. A plain reading of the Fourth Schedule, Group B column 4, shows that the period of limitation in this

column is provided for suits which are to be brought under the provisions of the section mentioned in column 2. With the policy of the legislature

underlying this special enactment, or with the wisdom of it, we are not concerned. All that we are concerned with is the intention of the legislature

to be gathered from the phraseology & wording of the statute. It would, therefore, be difficult to agree with the contention that the period of

limitation provided in column 4 against suits u/s 183 would apply also to suits brought under the provisions of Section 9 of the Code of Civil

Procedure. We are, therefore, clearly of opinion that a suit such as the one which has given rise to this appeal and which was within the cognizance

of the Civil Court, and was brought presumably under the provisions of Section 9 of the Code of Civil Procedure, is to ""be governed by the

provisions of the Indian Limitation, Act The only articles which apply to such a case are Arts. 142 or 144 and in either case the suit would be

within limitation, as it was instituted less than three years of the date on which the cause of action arose.

5. No other point has been pressed in arguments.

6. As a result the appeal is dismissed with costs.