

(1942) 10 AHC CK 0004

Allahabad High Court

Case No: None

Roshan Lal

APPELLANT

Vs

Babu Lal alias Babu Bam

RESPONDENT

Date of Decision: Oct. 2, 1942**Citation:** AIR 1943 All 84 : (1942) 12 AWR 394**Hon'ble Judges:** Bajpai, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Bajpai, J.

This is an appeal by the defendant Roshan Lal. The suit of the plaintiff was dismissed by the trial Court but it was decreed by the lower appellate Court and hence the defendant, has made this second appeal. The lower appellate Court set aside the decree of the trial Court, decreed the plaintiff's claim for possession and for recovery of Rs. 87-8-0 as mesne profits. The facts giving rise to the present litigation might be briefly stated: It appears that one Bhopal was the occupancy tenant of a certain holding. He died in December 1932. The patwari seven days after reported that Bhopal had died and one Roshan was his collateral and as Roshan had shared in cultivation with Bhopal, Roshan's name might be entered as an occupancy tenant in the revenue papers. The usual proclamation u/s 197, U. P. Land Revenue Act, was issued and two persons Mul Chand and Bhup Singh who were zamindars of the village objected to the entry of Roshan's name as an occupancy tenant. They contended that Bhopal died without leaving any heir and Roshan was neither the collateral of Bhopal nor did Roshan ever share in cultivation with Bhopal. They said that as zamindars the holding reverted to them. The Sub-Divisional Officer acceded to the report of the patwari and to the claim of Roshan. The zamindars appealed to the Collector and were unsuccessful. All this happened in 1933. Babu Lal, the present plaintiff, filed the present suit on 17th July 1937 in the Court of the Munsif of Hathras. He alleged that he was a minor when the earlier revenue proceedings took

place, that he is one of the zamindars of the village along with his brothers Mul Chand and Bhup Singh, that these two latter colluded with Roshan and therefore the decision of the revenue Courts was vitiated and that that decision was in no way a bar to the institution of the present suit. Babu Lal then went on to say that Bhopal died without leaving any heir, that Roshan was not the collateral of Bhopal, that Roshan never shared in cultivation with him and that therefore Roshan was a rank trespasser and as he had been in possession of the property for some time past the plaintiff was entitled not only to dispossess Roshan Lal but to obtain mesne profits from him which the plaintiff valued at Rs. 87-8-0.

2. The defence of Roshan Lal was that the suit was not maintainable, that Roshan Lal was the tenant of the holding and that the present suit was barred by *res judicata*. The learned Munsif before whom the suit was filed remitted one issue to the revenue Court, viz., the issue on the question of Roshan Lal's tenancy. The revenue Court recorded a finding to the effect that Roshan Lal was not a collateral and had not shared in cultivation with him and could not therefore be considered to be the occupancy tenant of the plot, in dispute. The learned Munsif was bound to accept this finding and he, accepting it, proceeded to dispose of the other matters in controversy. He came to the conclusion that the suit was cognisable by the civil Court but in view of the earlier proceedings between Roshan Lal on the one hand and Mul Chand and Bhup Singh on the other the plaintiff who was after all the younger brother of Mul Chand and Bhup Singh could not re-agitate the point and therefore the suit was not maintainable. In this view the suit was dismissed.

3. There was an appeal by the plaintiff and the learned civil Judge was of the opinion that the suit was maintainable, that the earlier revenue decision did not disentitle the plaintiff from maintaining the present suit and therefore the dismissal of the plaintiff's suit was not warranted by law. The finding of the revenue Court which was adverse to Roshan Lal was of course binding on the Munsif u/s 273, Agra Tenancy Act of 1926, but was not binding on the lower appellate Court. The learned Judge, therefore, went into that question and he was of the opinion that the evidence to prove the connection of Roshan with Bhopal was meagre and defective and this relationship was not proved. He also entertained grave doubt about Roshan Lal sharing in cultivation with Bhopal. He held that Babu Lal was entitled to Rs. 87-8-0 as mesne profits for the years in dispute and in the result the plaintiff's claim for possession over the disputed land and for recovery of Rs. 87-8-0 was decreed.

4. In second appeal before us, the plea of *res judicata* and non-maintainability of the suit is advanced again by the defendant-appellant. After having heard Mr. Panna Lal at length on this point, we have come to the conclusion that there is no force in the contention. When the patwari made a report and proceedings after the proclamation started in the revenue Court and objections were filed on behalf of Mul Chand and Bhup Singh to the entry of Roshan's name as an occupancy tenant the proceedings presumably were u/s 39, U.P. Land Revenue Act, and then if the

order was also passed by the Revenue Officer u/s 39 directing the recording of Roshan Lal's name and amending the annual register maintained u/s 32 there does not appear to be any bar which prevents the plaintiff from instituting the present suit. It is, however, contended that the decision was u/s 42, Land Revenue Act, read with Section 40 of the Act and then reliance is placed on Section 44. Section 44, Land Revenue Act, says that:

All entries in the annual register made under Sub-section (3) of Section 33 shall be presumed to be true until the contrary is proved.

5. This portion of the section is not applicable because Sub-section (3) of Section 33 refers to registers prescribed by Clauses (a) to (d) of Section 32 and these clauses refer to registers of persons having proprietary rights. Section 44 then proceeds and says that subject to the provisions of Sub-section (3) of Section 40 all decisions under Sections. 40, 41 and 42 shall be binding on all revenue Courts in respect of the subject-matter of the dispute. If we were to assume that the earlier decision of the revenue Courts in the present case was under the provisions of Section 40 or Section 42 of the Act then there is a clear provision in Section 44 to the effect that all such decisions shall be binding on the revenue Courts subject to the provisions of Sub-section (3) of Section 40. We therefore fall back on Sub-section (3) to Section 40 which says that no order as to possession passed under this section shall debar any person from establishing his right to the property in any civil or revenue Court having jurisdiction.

6. It is therefore clear that the person aggrieved has a right to establish his right in a civil or revenue Court whichever of those Courts had jurisdiction. The dispute in the present case is a dispute of a civil nature and relief can be granted by the civil Court u/s 9, Civil P. C., unless cognisance is expressly or impliedly barred. The contention is that u/s 230, Agra Tenancy Act, the cognizance of the civil Court is barred inasmuch as adequate relief could be obtained by the plaintiff by recourse to the revenue Court. When we asked Mr. Panna Lal to refer us to any relevant provision of the revenue law under which relief could be obtained by the present plaintiff he: drew our attention to Sections. 121, 122 and 123, Agra Tenancy Act. Now Sections 121 and 123, Agra Tenancy Act, deal with suits that may be filed by the tenant against the land-holder or by the land-holder or the tenant during the continuance of a tenancy. It is clear that in the present case the plaintiff zamindar does not admit any tenancy whatsoever. Section 122 provides for a suit by land holder for declaration as to who among disputing claimants is the tenant of a particular holding. Neither of these provisions would be applicable and the plaintiff could not have obtained any relief under the sections named above. Mr. Panna Lal then referred us to Section 44, Agra Tenancy Act, and said that the present plaintiff could treat Roshan Lal as a trespasser and in spite of that sue him for ejectment and for damages u/s 44, Agra Tenancy Act. It is true that the plaintiff could have instituted a suit u/s 44 but he could also have instituted a suit in the civil Court; such a case may arise--and the

present is a case of this kind where adequate relief could not be granted by the revenue Court. In [Manohar Singh and Others Vs. Sheo Saran](#) a Pull Bench of this Court observed as follows:

The plaintiff in a suit u/s 44 cannot claim more than four times the annual rental although if he were suing in a civil Court, he might under special circumstances get mesne profits much larger in amount. Could it have been the intention of the Legislature to take away the civil right of a proprietor to claim the full amount of mesne profits from a trespasser who has entered upon his property wrongfully? "We are of opinion that no such intention in the mind of the Legislature can be inferred.

7. A similar view was held by Mukerji and Bennet JJ. in [Mt. Raji Vs. Ram Lagan and Others](#) . They held that a suit by a landlord against a trespasser lies in the civil Court and although S. 44 would also give a remedy with a limited amount of damages in the revenue Court, still Section 230 of that Act does not bar the jurisdiction of the civil Court. It is thus clear that the cognizance of the civil Court for the entertainment of a suit such as was instituted by the plaintiff in the present instance is not barred by any provision of the revenue law. The facts of this case are similar to the facts in [Ram Jas Singh and Others Vs. Ram Harakh Pandey and Others](#) , where Sulaiman and Pullan JJ. held that a civil suit was not in any way barred. There is nothing in the policy of the Legislature which gives exclusive jurisdiction to revenue Courts for certain kinds of dispute from which we can infer that a dispute of the present nature is outside the jurisdiction of the civil Court. The question whether the defendant is a tenant and of what class is undoubtedly within the special cognizance of a revenue Court but the earlier proceedings which are argued as being a bar to the maintainability of the present suit were proceedings more or less of a summary nature and it is definitely provided in Section 40 that regular suit for the establishment of the right is not barred. In certain cases, more particularly where proprietary rights are in dispute, the subsequent suit would lie in the civil Court and in those cases where adequate relief can be granted by the revenue Court the subsequent suit would lie in the revenue Court but in those cases where adequate relief, even where the dispute is about cultivatory rights, cannot be obtained from the revenue Court, the subsequent suit must needs lie in a civil Court.

8. In the present case, we cannot lose sight of the fact that when the dispute was determined by the revenue Court in a regular manner, that is to say, when the Munsifs Court remitted an issue to the Assistant Collector the decision of the Assistant Collector was against Roshan Lal, the present appellant and that finding of the revenue Court has been affirmed by the learned Judge in appeal also. For the reasons given above, we think there is no force in this appeal and we dismiss it, but because Mul Chand and Bhup Singh who lost in the earlier revenue proceedings have not had the courage to come forward themselves but have allowed their younger brothers to fight the battle, we think, the ends of justice would be met by

directing the parties to bear their own costs of the entire litigation in all Courts.