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(1925) 04 AHC CK 0022

Allahabad High Court

Case No: None

(Munshi) Shib Ram		APPELLANT
	Vs	
Faqira and Another		RESPONDENT

Date of Decision: April 6, 1925

Acts Referred:

- Court Fees Act, 1870 - Section 7(11)

Citation: AIR 1925 All 705

Hon'ble Judges: Mukerji, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Mukerji, J.
This is a case involving a very important point of principle and should be decided by a Bench of two Judges at least.

2. One of the plaintiffs is the appellant in this Court. The plaintiffs brought the suit, out of which this appeal has arisen, on the allegation that they were the owners of a certain house and its appurtenant buildings, that they let out a portion of that house and building to the respondent, the defendant in the case, on a rent of Rs. 5 per mensem, that the defendant paid only a part of the rent due, that a notice to quit was served on the defendant and that he had failed to vacate the portion occupied by him. The plaintiffs accordingly sued to recover the arrears of rent and a small amount as damages for mesne profits. The plaintiffs brought their suit on a Court-fee, calculated on Rs. 60, viz., a year''s rent, under the provisions of Sub-clause (cc), Clause 11 of Section 7 of the Court Fees Act. They valued their suit at Rs. 60 so far as the claim for possession went.

3. The defence was that the defendant did not hold the property under the plaintiffs; but he held it from one Mt. Durgi, He stated in his written statement that Mt. Durgi was a necessary party to the suit.

4. The learned Subordinate Judge framed four issues and the first one of these was whether the plaintiffs or Mt. Durgi owned the house. The second issue was whether the defendant rented the house from the plaintiffs or Mt. Durgi. If so, at what rate of rent?

5. The learned Subordinate Judge did not decide issue No. 1 and on issue No. 2 he held that the letting alleged by the plaintiffs had not been proved. On the question whether Mt. Durgi should be impleaded the learned Judge was of opinion that it was not necessary to implead her. On these findings the learned Subordinate Judge dismissed the suit.

6. On appeal the learned District Judge upheld the findings of the Court of first instance and dismissed the suit. He considered the question whether it was open to the plaintiffs to say that they had a title to the house, and although the alleged tenancy was not proved, they were entitled to recover possession on foot of their title. The learned Judge came to the conclusion that it was not open to the plaintiffs to shift their ground and to eject the defendant as a trespasser.

7. In this Court it has been urged that there was nothing in law to debar the plaintiffs from proving their title and getting a decree for ejectment all the same. It is pointed out that there was an issue on the question of title, viz., whether the plaintiffs or Mt. Durgi owned the house. It is urged for the appellant that this issue should have been tried. As regards the fact that the suit was brought as a suit between landlord and tenant on a small Court-fee it is pointed out that the Court-fees Act is a purely fiscal enactment and it cannot take away the right of a party to the relief to which he might be otherwise entitled.

8. On the other hand, it is urged that the plaintiffs have paid a small Court-fee, that they did not make Mt. Durgi a party, that they deliberately chose to frame their suit as one between a landlord and a tenant and that these considerations were sufficient for the dismissal of the suit on the simple ground that the tenancy had not been proved.

9. It will be noticed that the point raised is one of general importance. Every day suits are brought on the allegation that a certain person occupying a certain property is a tenant of the plaintiff and has refused to quit in spite of the tenancy having come to an end. So far as I am aware the decisions are not at all uniform as to whether a decree should be granted to the plaintiff on foot of his title on his failure to prove the tenancy set up by him.

10. It is not clear whether, if a plaintiff who brings his suit on an allegation of tenancy fails in it he will be allowed to maintain a fresh suit for ejectment without an allegation of tenancy. There does not appear to be any rule of law which can permit the filing of a second suit. So far as I can see at present the Courts which will have jurisdiction in both the oases will be the same and the same Courts of appeal up to the highest in the land would be open in both cases. If then a second suit without an

allegation of tenancy be barred, it would be unfair to the Courts to stop the plaintiff from succeeding simply because he had failed to prove an allegation of tenancy. The question of Court-fee can easily be settled by giving the plaintiff an opportunity to pay the proper amount.

11. In this particular case, as I have already mentioned, there was a distinct issue on title and that has not been decided.

12. The question, as already stated, is one of great importance to house owners, and so far as I am aware there is no clear authority on either side. This case is sure to go before two Judges on a Letters Patent appeal. It would save trouble and expense if it be heard by two Judges at once.

Mukerji, J.

13. The fact of the case will sufficiently appear from the referring order of one of us. The question raised and to be discussed was whether the plaintiffs'' suit, it having failed on the allegation of tenancy, could succeed on title. This question was decided in the affirmative in the particular circumstances of that case in Balmahund v. Dalu (1903) 25 All. 498. This case, however, is slightly different from that case. Further, it appears that after the decision of this case an amending Act was passed by which a landlord was allowed to sue for ejectment of an alleged tenant on payment of a smaller Court-fee than would be required to eject the defendant as a mere trespasser.

14. This case is further differentiated by the fact that the defendant in this case pleaded that he was holding as a tenant not from the plaintiffs but from one Mt. Durgi. The Court of first instance distinctly held that the defendant had proved his case. The lower Appellate Court, as we understand its judgment, is also of the same opinion. Mt. Durgi is not a party to this litigation. It has been further found that Mt. Durgi is in possession. It follows that in this suit the plaintiffs cannot get a decree for ejectment without impleading Mt. Durgi and seeking to eject her. She is not a party and the plaintiffs will have to bring a suit against Mt. Durgi in all circumstances. The fear that was expressed in the referring order was that a second suit might be barred as res judicata. But the second suit in the present case will very likely be against Mt. Durgi as the defendant claims under her on the findings of the Courts below.

15. In our opinion there is no reason to allow the plaintiff either to amend the plaint or to implead Mt. Durgi.

16. We dismiss the appeal with costs.