(1916) 04 AHC CK 0020

Allahabad High Court

Case No: None

Umrao Singh	APPELLANT
Vs	
Chheda Lal	RESPONDENT

Date of Decision: April 28, 1916

Citation: AIR 1916 All 249 : 35 Ind. Cas. 262

Hon'ble Judges: Walsh, J; Piggott, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This is a reference from the Local Government under the Kumaun rules. The defendants, who are residents of a village called Jaspur, were also proprietors in village Mandua Khera. In this village they owned a dera, or house of business, appertaining to which were certain outhouses, one of them a rathkhana or carriagehouse, others certain buildings described as stables and godowns. By a deed of sale the defendants purported to transfer to the plaintiff the whole of their proprietary rights in village Mandua Khera, and in the same deed of sale they expressly specified the dera and buildings appertaining thereto as included in the property transferred to the plaintiff. It would seem that the plaintiff had considerable difficulty in obtaining actual possession over the buildings purported to be conveyed to him. He brought a suit in which he claimed possession of the buildings appertaining to the said dera, or at any rate some of them. In this suit he was successful on first appeal, and the defendants did not carry the matter further. Nevertheless the plaintiff, finding that although under this decree he has obtained possession of the carriage-house, the defendants are still refusing him actual possession of the remaining outbuildings, that is to say, the stables and godowns, has instituted the present suit. The case for the defendants is that these outbuildings are used by them for the storage of agricultural implements and for the shelter of their cattle, and that they are, therefore, appurtenances to the tenant-holding which the defendants still possess in Mandua Khera. Now this

tenant-holding consists of the former sir lands of the defendants, of which they have become ex-proprietary tenants by Statute. In the Court of the Assistant Commissioner the substantial defence set up, on the merits, was that the outbuildings, now in suit, had never been sold to the plaintiff. There was, however, a further plea that, in any case, they are appurtenances to the defendants'' holding. The Assistant Commissioner found that these buildings had undoubtedly been sold to the plaintiff. In the second place, he held that they had, as a matter of fact, been included in the subject-matter of the former suit, and that the plaintiff had been given formal possession over them by the Court at the same time when he was given possession of the carriage-house. He was, therefore, inclined to think that the defence now set up as to these outbuildings appertaining to the tenant holding of the defendants was one which might and should have been pleaded in the former litigation, and was, therefore, barred in the present case by the rule of res judicata. He went on to consider whether it was established on the evidence in the present case that these buildings were appurtenances to the defendants'' holding, and he held that they were not. There was an appeal to the Deputy Commissioner. In that Court the first question considered was, whether the outbuildings, now in suit, had or had not formed part of the subject-matter of the former litigation, and this was again decided in favour of the purchaser, that is to say, in favour of the present plaintiff. Then the Deputy Commissioner went on to hold that the buildings in suit were not necessary appurtenances to the defendants'' holding. Their appeal was, therefore, dismissed.

2. They brought a second appeal to the Court of the Commissioner, the High Court for the Kumaun Division. Their appeal was dismissed by that Court, on the ground that the questions sought to be raised by the defendants in second appeal were questions of fact on which the decision of the Court of first appeal was in law final. The reference now before us has been made by the Local Government, petitioned to that effect by the defendants. The question whether or not certain buildings are appurtenances to the holding of a particular tenant, in the sense that the tenant cannot be ejected therefrom so long as his tenancy subsists, must be regarded as a mixed question of fact and of law. In so far the suggestion put forward in the Local Government''s letter of reference appears to be correct. We think that the Commissioner, after accepting the facts as found by both the Courts below, should have directed his attention to the question whether the defendants did or did not possess the right of residence claimed by them as against the plaintiff and should have decided the case from that point of view. The Local Government, however, does not ask us merely to criticise the decision of the Commissioner, but also to express an opinion as to what would be a suitable order for them to make on the case as it stands. It seems to us that, although the judgment of the Commissioner is open to question on the ground already suggested, it is not a decision with which the Local Government should interfere. There is first of all the question of res judicata, which the Commissioner has not dealt with at all. The decision of the

Courts below on this point was challenged in the petition of appeal to the Commissioner; but it was challenged in very general terms. Now the finding of the first Court and of the lower Appellate Court on this point was that the buildings in suit in the present case had formed part of the subject-matter of the previous litigation between the same parties and that they formed part of the property over which the plaintiff was given possession as a result of that previous litigation. Unless this finding could be disturbed, the legal consequences deduced from it by the Assistant Commissioner and by the Deputy Commissioner would certainly follow, and the defendants would be debarred from setting up in the present case a claim to a right of residence which should have been put forward, if at all, as part of their answer to the plaintiff''s claim in the former suit. Now the decision of the Deputy Commissioner on this point, being the finding of a Court of first appeal, could only be challenged in second appeal by showing that it was based upon a misinterpretation of documents. There was no plea to this effect, and it does not appear that any attempt was made to show that the Deputy Commissioner''s finding had been arrived at on any misinterpretation of the pleadings, or the decree, or the dakhalnama issued in favour of the plaintiff in the former suit.

3. The next question is as to whether, on the facts stated and found, these buildings could possibly be treated as appurtenances to the tenant-holding of the defendants. The reasons given by the Assistant Commissioner and endorsed by the Deputy Commissioner for their findings on this point are certainly open to criticism. In all the cases in which tenants have been allowed possession of particular buildings on the ground that they are appurtenances to their tenant-holding, it will be found that the buildings in question had been occupied during the existence of the tenancy with the consent, express or implied, of the proprietor. The present case is quite a different one. The tenancy of the defendants came into existence on the execution of the sale-deed by which their proprietary rights in village Mandua Khera passed to the plaintiff, and on the execution of that very sale-deed the buildings, now in suit, ceased to be their property and became the property of the plaintiff. They have never occupied them as tenants with the consent of their proprietor; but on the contrary the plaintiff has been fighting hard to obtain actual and effective possession of these buildings ever since he became entitled to do so. The matter admits of being stated from yet another point of view. By the sale-deed, which is the basis of the plaintiff''s title, the defendants conveyed to him the buildings, now in suit, along with the soil on which they stood. They did not purport to reserve to themselves a right of residence in any of the buildings so conveyed, or any right of user in respect of the same. If they intended to derogate from their own grant and reserve to themselves some sort of right in respect of the buildings purporting to be sold, they should have made this apparent in their sale-deed. They did, as it stands, create in favour of the plaintiff a right to actual physical possession over these buildings. That right is unqualified, unless it can be shown that it is limited or qualified by the operation of Statute Law. Now the law does create in favour of the

defendants a statutory right in respect of their former sir lands, namely, the right to occupy the same as ex-proprietary tenants; but it is not suggested that the buildings, now in suit, are situated on land which was, at any time, part of the sir of the defendants. The transfer, therefore, in respect of these buildings, and of the land on which they stand, is not limited in any way by the operation of the Statute which created the ex-proprietary holding. The defendants have no more right to occupy these outbuildings now, and to claim to treat them as appurtenances to this holding, than an ordinary tenant would have to seize upon a piece of land belonging to his landholder in defiance of the latter''s objections to build a cattle shed on it, and then to claim a right to the use and occupation of that land on the ground that the cattle shed was a necessary appurtenance to the enjoyment of his tenant-holding. The defendants appear to have suggested in the Courts below that they were entitled to special consideration in this matter because the plaintiff, in seeking to deprive them of the use of these buildings, was trying to make it impossible for them to continue to cultivate their ex-proprietary holding, and was virtually endeavouring to bring pressure to bear upon them with a view to compelling them to surrender the holding. It is worth while to point out in this connection that, if the defendants'' case be that it is absolutely necessary for them to have certain huts or sheds in which to keep their cattle and store their agricultural implements within the boundaries of village Mandua Khera, they would be perfectly entitled to set apart some convenient plot of land appertaining to their sir holding for this purpose and to construct thereon the necessary buildings.

4. On the whole case, therefore, our answer to the Local Government''s reference is that we would not recommend any interference with the order of the Commissioner. We think the plaintiff is entitled to his costs of the proceeding in this Court.