Babuna Koer and Another Vs Bechchu Tewari and Others

Court: Allahabad High Court

Date of Decision: March 26, 1926

Citation: AIR 1926 All 531

Hon'ble Judges: Ashworth, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Ashworth, J.

This second appeal arises out of a suit brought by the plaintiffs-appellants for recovery of possession of a certain holding.

The plaintiffs are the widow and mother of one Ram Lakhan Tewari the original tenant of the holding. Their case is that Ram Lakhan Tewari died

25 years ago and that they inherited his right of occupation and have been in possession since then until recently when the defendants who are

distant cousins of Ram Lakhan Tewari have dispossessed them. The first Court decreed the suit. On appeal the District Judge of Ghazipur allowed

the appeal and dismissed the suit on the ground that a civil Court had no jurisdiction. He held that the fact of the plaintiffs having been out of

possession for two years gave rise to a presumption that their dispossession and possession by the defendants must be with the connivance of the

zamindar. He therefore held in effect the suit was one by a tenant to recover possession from the zamindar, and as such was maintainable only in a

revenue Court under the provisions of Section 79 and Section 167 of the Tenancy Act.

2. We are of the opinion that the lower appellate Court was wrong. No suit would lie against the landholder unless he authorized the defendant to

eject the plaintiff. Mere connivance does not amount to authorization: The fact that the defendant had been in possession for a long period of time

affords no inference of such connivance, much less of such authorization. Nor again would a finding that the landholder had authorized the

defendants to dispossess the plaintiff, and was therefore himself liable to be sued by the plaintiff u/s 79 of the Agra Tenancy Act (U.P. Act 2 of

1901) prevent the civil Court having jurisdiction in a suit against the defendant alone. Section 169, read with the fourth schedule and Section 79 of

the Tenancy Act, only debars a civil Court from entertaining a suit by a tenant for wrongful ejectment when that suit is against his landholder. Even

where in the plaint it is alleged that the defendant has ejected the plaintiff under the authorization and acting on behalf of the landholder this will not

remove the suit out of the jurisdiction of the civil Court, For it is no answer to an allegation of tort that the defendant has acted under the authority

of a third person.

3. Whether a landlord can be joined with another person as defendant in such a suit for wrongful ejectment brought in the civil Court, or whether a

third party can be joined with the defendant landholder in a suit brought in the revenue Court is a question not altogether free from difficulty. At first

sight it would appear that this is permitted, to the plaintiff or the Court, by Order 1, Rules 3 and 10(2) of the Civil Procedure Code, which rules

are made applicable to suits under the Tenancy Act by Section 193 of the latter Act. But we are of the opinion that rules of procedure cannot

override rules prescribing jurisdiction. A civil Court cannot entertain a suit against a landholder brought by his tenant nor can a revenue Court

entertain a suit against a person other than the landholder and it makes no difference that such landholder or other person is only made a co-

defendant (either originally or later on.) There may be inconveniences attaching to this conclusion, but if so they should be remedied by action on

the part of the Legislature if possible. It may be that these possible inconveniences are inherent in a system of special jurisdiction.

4. For the reasons given we disagree with the finding of the lower appellate Court and setting aside the decree of the lower appellate Court we

restore the decree of the first Court and award costs throughout to the appellant including costs in this Court.