(1944) 04 AHC CK 0010

Allahabad High Court

Case No: None

Hamid Husain Khan		APPELLANT
	Vs	
J.R.K. Wallace		RESPONDENT

Date of Decision: April 10, 1944

Citation: AIR 1944 All 200

Hon'ble Judges: Malik, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Malik, J.

This is a defendant''s appeal. On 21st March 1938, the defendant had executed a lease of certain agricultural property in favour of the plaintiff on payment of Rs. 266 per year as rent. It was also provided in the lease that the lessee was liable to pay land revenue which was Rs. 122 per annum. Soon after the lease, however, disputes arose between the parties and the lessor first came into the Court on a claim that the rent reserved-had not been paid. After the decision of that case, the lessee started the present proceedings on 12th July 1940. His allegations were that he was entitled to certain compensation or damages which amounted to about Rs. 746. The details of the claim were that the defendant lessor was to have his share on private partition with Khadim Singh of a certain plot recorded in the village papers, so that the lessee may be able to take possession of the portion which had come to the lessor''s share and for failure to give him possession under this head the plaintiff claimed Rs. 210-14-6 as damages. The plaintiff further claimed a sum of Rs. 192-9-0 as. damages or compensation ort the ground that he had not been able to get possession of certain sir and khudkasht lands which were included in his lease. A still further sum of Rs. 342-12-0 was Claimed on the ground that the plaintiff had not been given possession of certain fruit trees. Among other defences, which it is not necessary here to set out, one plea taken by the defendant was that the civil Court had no jurisdiction. The trial Court held in favour of the defendant and directed that

the plaint be returned for presentation to the proper Court. The plaintiff appealed against that order and the lower appellate Court held that the suit was cognizable by the civil Court and the suit had been rightly instituted in the Court of the Munsif, but as the suit had not been tried on the merits and there were no materials before the lower appellate Court for decision of the case on the merits it remanded the case to the trial Court for proper decision. Both the Courts below were agreed that Section 217, U.P. Tenancy Act, did not apply to the case. The difference of opinion in the lower Courts was as to whether Section 236, U.P. Tenancy Act, did or did not apply. The learned Munsif was of the opinion that Section 236 was applicable, while the lower appellate Court on appeal held that Section 236 was not applicable. I have carefully considered the two Sections 236 and 217. To my mind the case clearly comes u/s 217, U.P. Tenancy Act. It is true that the claim of the plaintiff is not based on the allegation that he had been put in possession and had later on been ?dispossessed but was based on the allegation that he had not been put in possession at all. Section 217 is divisible into several parts and the words "a thekadar who has been wrongfully prevented from exercising any of his rights as thekadar" are to my mind wide and comprehensive enough to include a claim on the ground that the thekadar had not been put in possession of certain property which he was entitled to get possession of under the terms of the lease.

2. The lower appellate Court thought, and to my mind rightly, that it is a suit for damages for breach of contract. The lower appellate Court then went on to say that suits for damages for breach of contract are peculiarly within the cognizance of the civil Court. To my mind the lower appellate Court has in its conclusion gone too far. Section 217 provides for cases of compensation for breach of contract and though it is true that generally a claim for damages for breach of contract is cognizable by the civil Court but where the Legislature has provided a special remedy under a special statute the Courts to which a special jurisdiction has been granted should have preference over Courts which lave the right to try the suit under the general law. In my view, therefore, the plaintiff was entitled to the reliefs claimed by him u/s 217, U.P. Tenancy Act provided he proved his claim on the merits and the suit would, therefore, be within the exclusive cognizance of the revenue Court by reason of Section 242, U.P. Tenancy Act. In this view I am supported by a Division Bench ruling of this Court : Hazari Tewari Vs. Mt. Maktula Chaubain and Another . It is true that in that case the point was conceded by the learned Counsel for the appellant, but the Court went on to express its opinion on the point and observed as follows : "Even assuming that inasmuch as the plaintiff never obtained possession of the leased property he cannot be said to have been wrongly ejected there can be no doubt that he has been wrongly prevented from exercising his rights as thekadar and it would have been open to him to sue in the revenue Court for recovery of possession and compensation u/s 212, Sub-section (1) of the Act." The language of Section 212, Agra Tenancy Act of 1926 is almost similar to the language of Section 217 of the new U.P. Tenancy Act of 1939. The learned Counsel for the respondent Mr. Baleshwari Prasad

has, however, raised the plea that even though in my opinion the learned District Judge was wrong in holding that the suit was cognizable by the civil Court, this Court should not in second appeal interfere. He relies on Section 291, Clauses (2) and (3), U.P. Tenancy Act of 1939 and argues that in this case as there was a question of jurisdiction involved an appeal would lie to the District Judge whether the suit was filed in the civil Court or the revenue Court and he relies on Section 265, Clause (3), U.P. Tenancy Act and he says, therefore, that as the plea was taken in the Court of first instance and as there was not sufficient material before the lower appellate Court to determine the matter, finally it was open to that Court to send the case back for proper determination either to the civil Court or to the revenue1 Court irrespective of the fact as to whether the suit was originally cognizable by one Court or the other. Section 291, U.P. Tenancy Act, has now replaced Section 269, Agra Tenancy Act of 1926, but the language of the two sections is almost identical. Before these sections were enacted there used to be constant trouble as to whether a case was cognizable by a civil Court or revenue Court and sometimes this point was debated from one Court to another and it was several years before it was finally determined as to which Court should entertain and try the suit. It was to put an end to this kind of harassment that this section was enacted so that on appeal the lower appellate Court may send the case to one Court or the other and whether it was sending the case to the right Court or to the wrong Court, the Court to which the case was sent for trial on merits should have no further difficulty in trying and disposing of the case on the merits.

3. My attention was drawn to Schedule 4, Group A, in which those cases in which an appeal lies to the civil Court are given and I do not find Section 217 mentioned in any of the various schedules appended to the U.P. Tenancy Act. I do not know whether it was an oversight, but the fact remains that in a suit brought u/s 217, U.P. Tenancy Act, an appeal will only lie to the Court of the District Judge if a question of jurisdiction is raised as provided for by Section 265, Clause (3), U.P. Tenancy Act. If the suit was brought in the revenue Court and a question of jurisdiction was raised by the defendant, then of course the appeal would lie to the civil Court, otherwise it would not. The interpretation put by the appellant on Section 291, U.P. Tenancy Act, will then lead to this result that Section 242, U.P. Tenancy Act, making certain type of cases exclusively triable by the revenue Court will become practically nugatory. It would be open to the plaintiff to file any suit in either the civil or the revenue Court and in case the defendant did not submit to the jurisdiction of that Court and raised a plea of jurisdiction since the appeal went to the District Judge he would be entitled to send the case back either to the civil Court or to the revenue Court and that Court would then have jurisdiction to try it. To my mind, that may have been the intention of the Legislature and speaking for myself I do not consider that this will be really a disadvantage to the litigant public, rather than the question of jurisdiction should be fought out up to the High Court and the litigation should remain pending for several years; but a Full Bench of this Court in Ram Iqbal Rai Vs. Telessari Kuari and Another

held that the section applied only to suits wrongly instituted in a civil Court in which, if rightly instituted in the revenue Court, an appeal would lie on the revenue side to the District Judge and I am bound by the said decision. The Legislature had before it the decision of the Full Bench when it re-enacted the old Section 269, Agra Tenancy Act, and as it maintained the same language in the U.P. Tenancy Act of 1939 it must be deemed that the Legislature has approved of the decision of the Full Bench. The learned Counsel for the appellant has also relied on the case in Kashi Kahar Vs. B. Asharfi Singh, for the proposition that Section 291, U.P. Tenancy Act, was not applicable inasmuch as in this case the appeal had been heard not by the District Judge but by the Additional Civil Judge of Gorakhpur. Under the Agra Tenancy Act, 3 of 1926, an appeal could be heard only by the District Judge in revenue matters in cases which came u/s 242 of the said Act. Under the new U.P. Tenancy Act, 17 of 1939, Section 284, a District Judge may with the previous sanction of the High Court, transfer any appeal or class of appeals from the decree or order of a revenue Court pending before himself to a Civil Judge subordinate to him and such Civil Judge shall dispose of such appeal or class of appeals as if he were a District Judge. I do not know whether there is any such general or special order in this case, as the point was not taken in the Court below but in view of this modification in the law the case of Kashi Kahars will not have the same general application as it had when that decision was given. In view of all the circumstances set out above I am of opinion that the decision of the learned Munsif returning the plaint for presentation to the proper Court was right. The order passed by the learned Additional Civil Judge on 19th January 1942, is set aside and the order of the learned Munsif is restored with costs in all Courts.