

(1916) 05 AHC CK 0027

Allahabad High Court

Case No: None

Ganga Prasad

APPELLANT

Vs

Har Narain

RESPONDENT

Date of Decision: May 11, 1916**Acts Referred:**

- North Western Provinces Tenancy Act, 1901 - Section 58, 64

Citation: AIR 1916 All 122 : (1916) ILR (All) 465**Hon'ble Judges:** Walsh, J; Sundar Lal, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

Sundar Lal, J.

This is a reference u/s 195 of Act II of 1901 (United Provinces), made by the District Judge of Budaun, under the following circumstances:

The plaintiff Har Narain avers that he is the zarnindar and owner of two plots of land Nos. 47/2 and 52/3 in patti Muhammad Ali in mahal Altaf Husain of mauza Ganaur of which the defendant Inderman is a non-occupancy tenant under the plaintiff. He sues for the ejectment of the said defendant u/s 58 of Act II of 1901 (United Provinces). The second defendant to the suit is one Ganga Prasad alias Gangola, who, according to the plaint, is colluding with defendant No. 1 and has been put in possession of the said land by the defendant No. 1. u/s 64 of the Agra Tenancy Act (II of 1901), in all suits for ejectment any person in possession claiming through the tenant may be joined as a party to the suit. Ganga Prasad alias Gangola was therefore properly made a party to the suit on the allegations made in the plaint.

2. Inderman filed a written statement disclaiming all interest as a tenant in the land in suit. The second defendant Ganga Prasad, alias Gangola, has defended the suit on the ground that he is in possession of plot No. 47/2 as a tenant of one Sheo Prasad (who is alleged to be the real zamindar and owner of the land), under a

registered lease, dated the 27th of April, 1914, granted by Sheo Prasad aforesaid for a term of nine years. As to the other plot (No. 52/3), the defendant alleges that it is in the possession of Sheo Prasad aforesaid. It is not clear what exact interest Sheo Prasad had in the land, but it appears that in 1914, the plaintiff Har Narain had sued Inderman and Sheo Prasad for the recovery of rent due to him from the defendant Inderman. That suit was decreed in appeal by the Collector by a judgement, dated the 24th of July, 1914. Sheo Prasad's pretensions to the land seem to have been disregarded by the Collector. It was during the pendency of that suit that the lease relief upon by the defendant was granted by Sheo Prasad. The court of first instance in this case has held that the plaintiff was the real owner of the land in suit and that Inderman was a tenant of the plaintiff. It has decreed the claim.

3. The defendant Ganga Prasad, alias Gangola, preferred an appeal against the said decree in so far as it relates to plot No. if. The appeal was in the first instance filed by him in the court of the Commissioner. That officer, however, returned the memorandum of appeal for presentation to the proper court on the ground that no appeal lay to him. The defendant then filed the memorandum of appeal in the court of the District Judge, who is of opinion that the appeal really lay to the Commissioner and not to him, but in view of the fact that the Commissioner has already refused to entertain the appeal for want of jurisdiction the learned Judge has made this reference to this Court for the determination of the question to which court the appeal lies in law.

4. The suit is really one u/s 58 of the Agra Tenancy Act, and falls in Group "C" of the Fourth Schedule to that Act. u/s 179 of the said Act, an appeal lies to the Commissioner from the decree of the Assistant Collector unless by some other section of the Act an appeal is given in any case to another court. Section 177 of the Act gives an appeal to the court of the District Judge "in all suits in which (e) a question of proprietary title has been at issue in the court of first instance and is a matter in issue in the appeal." The defence of Ganga Prasad, alias Gangola, in the suit is that the plaintiff is not the owner of the land in suit, but one Sheo Prasad under whom the defendants claim. The question of plaintiff's proprietary title to the land was thus put in issue in the court of first instance and is a matter in issue in the appeal. In the case of the Maharaja of Benares v. Baldeo Prasad (1911) A.L.J. 36, the tenant in a suit for the assessment of rent denied the title of the plaintiff to the land in suit in that case and urged that the Maharaja of Benares was the real owner of the land. The Maharaja was added as a defendant to the suit. The court of first instance decided in favour of the plaintiff. The Maharaja appealed against the said decree to the court of the District Judge, who allowed the appeal. On appeal to this Court Mr. Justice Griffin held that no appeal lay to the District Judge. On appeal under the Letters Patent, the learned Chief Justice Sir John Stanley and Mr. Justice Baneji held that u/s 177(e) of the Agra Tenancy Act the appeal to the District Judge was rightly preferred by the Maharaja. The point referred to us is concluded by the decision in this case. There is another case reported at page 1198 of the seventh

volume of the Allahabad Law Journal, which takes the same view and points out that Section 198 of Act II of 1901, does not apply to the circumstances of this case, but the learned Judge has distinguished that case on the ground that the person whose title was set up by the defendant was made a party to the suit, and it therefore became possible to adjudicate upon the question of proprietary title against the said person. In this case Sheo Prasad is certainly not made party to the suit, and any adjudication made in this case on the question of the proprietary title to the land in suit would not be binding upon him. It would, however, all the same be binding upon the second defendant who has raised the question and a final decision as against him can be made in this case. The second defendant, who was not the tenant of the plaintiff, was competent in law to deny the plaintiff's title and the court was bound to adjudicate upon the question thus raised by him. The ruling of the Board of Revenue in the case of Adya Saran Singh v. Thakur 31 I.C. 853, in our opinion correctly lays down the law upon this point. Our reply to the reference is that an appeal lies to the court of the District Judge, who is directed to entertain the appeal and proceed to hear and dispose of the same according to law. The costs of the reference will be costs in the cause.

Walsh, J.

5. I agree.