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(1921) 12 AHC CK 0017

Allahabad High Court

Case No: None

Sheikh Muhammd Yakub and Others	APPELLANT
Vs	
Bechu Ahir and Others	RESPONDENT

Date of Decision: Dec. 6, 1921

Acts Referred:

- North Western Provinces Tenancy Act, 1901 - Section 202

Citation: 65 Ind. Cas. 251

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. In this suit the plaintiffs came into Court as the proprietors of certain land and sought possession by ejectment of a number of defendants, together with damages for their wrongful possession. Certain defendants in paragraph 9 of their written statement raised a plea in the following terms: "These defendants are only in possession of the plots mentioned below as sub-tenants of Brij Ballabh Rai and others, the principal ex-proprietary tenants. The plaintiffs have no right to bring the suit as against the defendants. The plaintiffs are only entitled to get rent from Brij Ballabh Rai and others, the principal tenants." The same facts were repeated in the paragraph which followed and there the plea was expressly taken that, u/s 202 of the Tenancy Act (Local Act II of 1901), the Civil Court was bound to require these contesting defendants to institute within three months a suit in the Revenue Court for the determination of the question raised by the pleading. The Court of first instance held that the provisions of Section 202 aforesaid did not apply, because there had already been a litigation in the Revenue Court as between the plaintiffs and Brij Ballabh Rai and others, the alleged ex-proprietary tenants. It proceeded to try the question in issue and gave the plaintiffs a decree for possession and Rs. 100 as damages. In appeal the learned District Judge has held that the provisions of Section 202 aforesaid apply to the case and should have been complied with by the Trial

Court. He has set aside the decree of that Court and remanded the suit to be dealt with in the manner laid down by Section 202. The appeal before us is against the order of remand. On the facts which have already been set forth, it seems clear beyond question that these contesting defendants did plead that they held a portion of the land in suit as tenants of a person in possession of the holding from the plaintiffs. On the face of it the provisions of Section 202 of the Tenancy Act apply to this pleading and the procedure there laid down ought to have been followed. Our attention has been drawn to one or two decisions of this Court, principally to that of Sarju Missir v. Bindesri Pershad 20 Ind. Cas: 917: 11 A.L.J. 691 as authority for the proportion that the Civil Court is not bound to take action u/s 202 aforesaid when the Revenue Court has already passed a decision on the question of tenancy as between the parties to the suit. The facts in this reported case were peculiar. The plaintiff game into Court alleging and admitting the previous litigation in the Revenue Court, but seeking to get rid of the decision of that Court on a plea of fraud. It was certainly difficult to see under those circumstances what there was for the Civil Court to remit to the Revenue Court for a second decision. In the present case the lower Appellate Court has given reasons for holding that the former litigation in the Revenue Court, to which these particular defendants were not parties, may not necessarily operate as res judicata against them, and indeed may Quite conceivably be reconsidered by the Revenue Court itself, upon a suit so conducted as to necessitate a full inquiry into the fasts. It does not seem to us that we are very greatly concerned with these matters, except in so far as they distinguish the present case from that of Sarju Missir v. Bindesri Pershad 20 Ind. Cas: 917: 11 A.L.J. 691. We think the learned District Judge was right and we dismiss this appeal with costs.