(1931) 05 AHC CK 0016

Allahabad High Court

Case No: None

Khushi Ram		APPELLANT
	Vs	
Mt. Manta and Others		RESPONDENT

Date of Decision: May 5, 1931

Acts Referred:

- Agra Tenancy Act, 1926 - Section 99

Citation: AIR 1931 All 758

Hon'ble Judges: Sulaiman, Acting C.J.

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Sulaiman, Ag. C.J.

1. This is a plaintiff''s appeal from an order returning the plaint for presentation to the Revenue Court. The plaintiff alleged in the plaint that he was the subtenant of the plot referred to therein and the defendants improperly and by an act of high-handedness, being actuated by dishonest motive and showing readiness to fight, cut away the crops sown by the plaintiff from his field on 6th October 1928. He claimed damages for the loss of the crops. The defendants in their written statement denied that the plaintiff was the subtenant, and pleaded that the holding had been surrendered long before that date and the crops had not been sown by the plaintiff at all. There was no express plea raised in the written statement that the civil Court had no jurisdiction to entertain the suit. The act of the defendants complained against by the plaintiff amounted, on the allegations of the plaintiff to a criminal offence and the suit was therefore not of a Small Cause Court nature. The first Court on the merits found that the defendants were the landholders and that the plaintiff had not surrendered the holding, and that the crops had been sown by the plaintiff Khushi Ram in kharif 1336-F. It accordingly decreed the claim.

2. On appeal the lower appellate Court came to the conclusion that this was a case of a dispute between a tenant and a landholder and that it should be settled by the Revenue Court. It declined to decide the question as to who had raised the crops in dispute. From the plaintiff''s admission that his crops had been cut away by the defendants, who were found to be the landholders, the lower appellate Court inferred that the plaintiff alleged that his landholders had illegally dispossessed him. We cannot find any admission of the plaintiff that he had been dispossessed from his holding as well.

3. There is no doubt that if the plaintiff was dispossessed from his holding as a result of the cutting away of the crops which had been sown by him, he might have instituted a suit in the Revenue Court for the recovery of possession of his holding and also for compensation for wrongful dispossession u/s 99, Agra Tenancy Act. If he could have claimed adequate relief through the Revenue Court, then ho was bound u/s 230 of the Act to have recourse to that Court. The mere fact that the relief claimed by him is not in form identical with what he might have claimed in the Revenue Court would not under the explanation added to that section make any difference. On the other hand, if the plaintiff was really not dispossessed from his holding at all, but his crops were cut and removed as if moveable property had been taken away from the place and the plaintiff remained in possession of his holding, there would be no necessity for him to bring a suit for obtaining possession of his holding. Under such circumstances a suit for recovery of damages for wrongful dispossession could not be entertained by the Revenue Court and his remedy would lie in the civil Court. A case of the former nature arose in Chet Ram v. Sahaba [1915] 27 IC 532 in which a learned Judge of this Court held that there having been a dispossession from the holding the Revenue Court was the proper forum. The case of Ram Saran Das v. Hari Kishen Koeri [1920] 58 IC 511 was a case of the other nature, in which the plaintiff was found to be in possession even after the crops had been cut away and misappropriated. Another learned Judge of this Court held that the suit for damages was not one for compensation for wrongful dispossession.
4. It seems to us that in order to find definitely whether the civil Court should grant the plaintiff the relief ha asked for it is necessary to ascertain whether he had or had not been dispossessed from his holding after 6th October 1928.

5. As the legal position was not correctly appreciated by the Courts below, and the case has not been approached from the right standpoint we cannot uphold the order of the lower appellate Court. The case braving been disposed of on a preliminary point, we must remand it. Inasmuch as the issue suggested by us is a new issue, the lower appellate Court will be at liberty to allow the parties to produce further evidence. We accordingly allow this appeal, and setting aside the order of the lower appellate Court sand the case back to that Court for disposal according to law. We direct that the costs of the appeal should abide the event.