

(1877) 06 AHC CK 0005

Allahabad High Court

Case No: None

Bakhat Ram and  
Another

APPELLANT

Vs

Wazir Ali and Others

RESPONDENT

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Date of Decision: June 29, 1877

Citation: (1875) ILR (All) 448

Hon'ble Judges: Turner, J; Spankie, J

Bench: Division Bench

Final Decision: Dismissed

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### Judgement

1. It was the duty of the lower Appellate Court to determine for itself whether or not the suit was cognizable by the Civil Court, and if it held the suit to be cognizable to proceed to determine it, remitting an issue u/s 354 touching damages, or if it found the suit was not cognizable to dismiss it forthwith. That the suit as brought was cognizable by a Civil Court, we see no reason to doubt. The plaintiffs contend that the defendants ousted their tenant and took possession as trespassers. Such a suit may be instituted in the Civil Court.

2. The question then arises whether the defendants are to be regarded as trespassers or not.

3. In our judgment the Munsif was in error in holding that the plaintiffs, after the auction-sale, retained their position of conditional mortgagees. The lower Appellate Court properly held that, having acquired the rights of the mortgagors, they thenceforward retained possession in full proprietary right; and inasmuch as up to the time of the auction-sale their possession of the sir as mortgagees must be treated as the possession of mortgagors, it appears to us the defendants are entitled to contend that the sir was held by them at the time of the sale, and that after the sale, in virtue of the provisions of Section 7 of the Rent Act, they became entitled to a right of occupancy in the sir as tenants at favourable rates; and if, in the

assertion of this right at the proper season of the agricultural year, they took possession, offering to pay the proper rent due from them, the plaintiffs have no right to treat them as trespassers, but can only claim rent in the proper Court.

4. In order to enable us to determine the suit and to avoid the necessity for any further remand or remission of issues, we order the lower Appellate Court to try the following issues: (1) Under what circumstances did the defendants take possession of the land in suit, and did they or did they not inform the plaintiffs of their intention to take possession of it as tenants, and of their readiness to pay rent. (2) If at the time the land was in the possession of the tenant, had the tenancy for the year in which the tenant was ousted commenced prior or subsequently to the auction-sale. (8) At what rent did the tenant hold the land in suit, and what proportion, if any, of that rent had he paid for the year in which he was ousted.

5. On the first issue the lower Appellate Court found that the defendants had ousted the plaintiffs' tenant, and that they did not inform the plaintiffs of their intention to take possession of the land as tenants, and of their readiness to pay rent. On the second issue it found that the tenancy for the year in which the tenant was ousted commenced subsequently to the auction-sale. On the third issue it found that the tenant paid an annual rent of Rs. 7-2-0 and that he had paid no portion of that rent for the year in which he was ousted. The lower Appellate Court having returned its findings, the High Court delivered the following.

#### JUDGMENT

6. When the plaintiffs obtained the rights of the conditional vendors, their rights as conditional vendees merged, and they became possessed of the entire proprietary interest in the estate. Thereupon, by virtue of a provision of the rent law recently introduced, the defendants became entitled to hold their land as tenants with rights of occupancy. Their proper course was to have given notice to the purchasers of their intention to avail themselves of their rights and to enter on the land as tenants, at the same time offering to pay such rent as might, having regard to the provisions of the Rent Act, be properly payable by them. It would then have been incumbent on them, or on the purchasers, if they were unable to agree to the amount of rent payable, to apply to the Revenue Court to determine the rent. The defendants, without communicating with the plaintiffs or taking any steps to have a rent assessed on the land, entered and ousted the tenant. They cannot, nevertheless, be deemed trespassers, for they have a right to the occupancy of the land, but the plaintiffs are entitled to recover damages for the use and occupation of the land, and we assess those damages at twenty-five per cent, less than the sum payable by the tenant.

7. The decree of the lower Appellate Court, so far as it reversed the claim for ejectment, is affirmed, so far as it dismissed the claim for damages it is in part affirmed and in part reversed, and the plaintiffs will obtain a decree for the sum

above-mentioned. Under the circumstances, we order each party to bear their own costs in all Courts.