

(1935) 01 AHC CK 0049

Allahabad High Court

Case No: None

Ram Dihal Dubey

APPELLANT

Vs

Gajraj Updahya and Others

RESPONDENT

Date of Decision: Jan. 3, 1935

Citation: AIR 1935 All 499 : 157 Ind. Cas. 665

Hon'ble Judges: Sulaiman, C.J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sulaiman, C.J.

This is a plaintiff's appeal arising out of a suit for a declaration that an order of ejectment against him and in favour of the defendants passed by the Revenue Court was ineffectual and invalid inasmuch as it had been obtained by fraud. No consequential relief could be asked for, as the holding, from which the plaintiff had been ejected, was an agricultural holding. The Court of first instance dismissed the suit on the ground that the claim was barred on account of the Revenue Court's decision. On appeal the lower appellate Court allowed the appeal and remanded the case for disposal on the merits. Among other things, the plaintiff had alleged that in the service of the notice issued u/s 81 by the Revenue Court, fraud had been committed, and the process-server was in collusion with the opposite party, and misrepresented to the plaintiff the nature of the proceeding. There were also other allegations that the plaintiff had sent rents by money orders, which had been returned and that this fact was suppressed by the defendants in the Revenue Court. The lower appellate Court came to the conclusion that the allegations that the process-server was in collusion with the defendants and that he had committed fraud on the plaintiff by misrepresenting that the notice was in connection with a redemption proceeding were matters relating to the service of notice and were exclusively cognizable by the Revenue Court, but that the allegation that the plaintiff had sent rents to the defendants twice by money orders, and that they did not

accept them, did not in any way, refer to the service or the non-service of the notice and was a matter, which could constitute fraud. On appeal to this Court, a learned Judge, who disposed of the appeal, rightly pointed out that the question whether the amount of arrears of rent was due and whether the defendants had refused to accept the rent sent to them were questions to be decided by the Revenue Court, and if they were not decided in that Court, they cannot be reagitated in the civil Court. But the learned Judge came to the conclusion that the question whether a notice had been properly served on the respondent u/s 81, Tenancy Act, or whether a fraud had been practised on him by the serving officer was also one for the decision of the Revenue Court. Inasmuch as the plaintiff's application for review in the Revenue Court has failed, the learned Judge held that the finding of the Revenue Court that there had been no fraud committed was binding on the civil Court, and it could not now be questioned by the plaintiff.

2. It is quite obvious that the question whether the defendants had falsely claimed certain arrears of rent, which were not due and whether they had suppressed the fact that rents had been tendered to them would be matters which could not constitute a basis for re-opening the order on, the ground of fraud. These are matters which were not extraneous to the proceeding and should have been raised before the Revenue Court and decided by it. But where a fraud is committed on a defendant in that notice or the proceeding is not served on him at all, or there is some misrepresentation which makes him believe that the nature of the proceeding is different from what it really is, the defendant has really had no opportunity to appear before the Court and put his case before it. A fraud of this kind has always been held to vitiate the entire proceeding and invalidate the ex parte order, which might have been passed against the absent defendant.

3. It is highly doubtful whether questions of fraud which can avoid the entire proceeding could be gone into either u/s 151, Civil P.C., or under Order 47, Rule 1, for an ex parte decree obtained fraudulently becomes voidable subsequently when the fraud comes to the knowledge of the defendant. But in any case it is clear that the orders passed by the Revenue Courts in the revenue proceeding could not, operate as res judicata in civil Court. Proceedings u/s 81, Tenancy Act, do not really result in a decree, and that is another reason why the order could not operate as res judicata.

4. But the real difficulty in the way of the plaintiff is that the suit itself is not cognizable by the civil Court at all. u/s 4, Civil P.C., the Code is not to limit or otherwise affect any special or local law that is in force. Section 230, Agra Tenancy Act, ousts the jurisdiction of the civil Court and confers exclusive jurisdiction on Revenue Court is for suits and applications of the nature specified in the fourth schedule. It follows that if the plaintiff could have brought a suit in the Revenue Court claiming substantially the relief that is now claimed, then the jurisdiction of the civil Court is completely barred under this section.

5. Assuming that the ejectment proceedings were fraudulent and are void and ineffectual as against the plaintiff, the effect is that the plaintiff would still continue to be a tenant of his holding and would be a tenant, who has been wrongfully dispossessed by the landholder. When the proceedings were fraudulent, it cannot be said that the ejectment of the defendants was in accordance with the provisions of the Tenancy Act. It must be held that the illegal ejectment brought about by fraud was otherwise in accordance with the provisions of the Act, u/s 121, Tenancy Act, a tenant during the continuance of a tenancy can sue for a declaration as to his right as a tenant, and u/s 99, Tenancy Act, where a tenant has been ejected from his holding otherwise than in accordance with the provisions of the Act by his landholder or any person claiming through him, he may sue the person so ejecting him for possession of the holding. It therefore seems to us that the plaintiff had a remedy by way of a regular suit for recovery of possession u/s 99, Tenancy Act, and in such a suit the Revenue Court would have been competent to go into the question of the alleged fraud and ignore the previous ejectment order if fraud were established. The Revenue Court would, further, be in a position to give effect to its own decree by putting the plaintiff into possession as against the landholder.

6. The learned advocate for the plaintiff-appellant relies strongly on the decision of a single Judge of this Court in *Mt. Jahandar Begum v. Chinta* 1929 All. 232, in which it was held - that the civil Court is the proper Court to determine the question of fraud by which a decree is obtained in the Revenue Court and the finding of the Revenue Court in a review proceeding that no fraud had been committed would not be binding on the civil Court at all. But in that case, the Revenue Court had decided that the plaintiff was a tenant of certain lands. The plaintiff then brought a suit in the civil Court for a declaration that he was really a grove-holder of the land and the Revenue Court decree had been obtained by fraud and he should be given possession. Under the old Tenancy Act the disputes between a grove-holder and a proprietor of the land could be settled by the civil Court. Accordingly the suit for a declaration that the plaintiff was a grove-holder and he had been wrongfully dispossessed and should be put in possession was cognizable by the civil Court. It was in these circumstances that the previous order of the Revenue Court which had been obtained by fraud was held not to be binding on the plaintiff. That case is clearly distinguishable from the case before us. Here under the Tenancy Act we have no jurisdiction to grant possession to the plaintiff of an agricultural holding. Our mere declaration would be ineffective. There is ample provision in the Act itself which entitles a Revenue Court to go into this question. We are therefore of opinion that the present suit is not cognizable by the civil Court at all. We accordingly dismiss the appeal with costs.