

(1934) 12 AHC CK 0047

Allahabad High Court

Case No: None

Ram Charan Das

APPELLANT

Vs

Mt. Nazeeran and Another

RESPONDENT

Date of Decision: Dec. 12, 1934

Acts Referred:

- Agra Tenancy Act, 1926 - Section 220

Citation: AIR 1935 All 342 : 158 Ind. Cas. 4

Hon'ble Judges: Bennet, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Bennet, J.

This is an application in civil revision in which the only ground argued was one of jurisdiction the allegation being that the trial Court had no jurisdiction to entertain the suit. I Should have thought that the relief asked would be the usual one that the plaint should be returned under these circumstances to the plaintiff for presentation to the proper Court but the relief asked in this revision is that this Court will dismiss the suit. That would be impossible if this Court agreed that the trial Court had no jurisdiction. Another point to be noted is that the decree in question was passed by an Assistant Collector dismissing the suit of the plaintiff and directing the parties to bear their own costs. The plaintiff has not brought this application in revision but the application in revision is brought, by Ram Charan Das, defendant, and lie again asks the Court to do what the lower Court has already done, that is, to dismiss the suit. The trial Court had found that the deed of sale was executed prematurely and before the theka money had fallen due. This finding, I am told, has been reversed by the District Judge in first appeal and the District Judge has remanded the suit to the trial Court for rehearing. The object of this revision apparently is to get a decision

from this Court that the District Judge was wrong in his order although that order of the District Judge cannot be the subject of a revision by this Court and is not now before this Court. The circumstances are that a theka was made for ten years beginning with 1332 Fasli by defendant 2 to defendant 1, the applicant in revision. Defendant 2 the zamindar at a later date on 1st November 1930 executed a sale deed assigning the right to receive the theka money for the two years 1338 and 1339 Fasli to the plaintiff.

2. The plaintiff has brought a suit for arrears of theka money. The question was whether such a suit would lie in the Revenue Court. Section 220, Agra. Tenancy Act, lays down that a suit by a lessor against a thekedar will lie in the Revenue Court. It is contended for the applicant that the applicant is not, the lessor. Section 3(6) explanation states that where the word "landholder" is used with reference to a thekedar it means the person to whom the thekedar's rent is payable. I consider that the effect of the sale deed and of the theka is that the plaintiff is the person to whom the thekedar's rent is payable for the two years 1338 and 1339 Fasli and accordingly that the plaintiff is in the position of a lessor for those years and entitled to bring a suit against the thekedar in the Revenue Court in accordance with Section 220, Agra Tenancy Act. Some further argument was made that the sale deed would be contrary to the provisions of Section 6(e), T.P. Act, because the sale deed was executed before the theka money for the years 1338 and 1339 fell due. Learned Counsel argued that in these circumstances this was a transfer of a, mere right to sue. I consider that the transfer was not merely of the right to sue but of the right to receive the theka rent. If that rent was not paid then no doubt the transferee had a right to sue. But the transfer was not merely of the right to sue and was not invalid u/s 6(e), T.P. Act. No ground has been shown for interference in this revision. I dismiss the application with costs.