APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice King

1934
April, 3

NATHU LAL (DEFENDANT) *v.* KEWAL RAM (PLAINTIFF)*

Agra Tenancy Act (Local Act III of 1926), section 132; schedule IV, group A, serial number 4—Suit by assignee of arrears of rent for recovery thereof—Cognizable by revenue court—Jurisdiction—Civil and revenue courts.

A suit by an assignee of arrears of rent, for recovery thereof against the tenant, is cognizable by the revenue court.

There is no restriction in section 132 of the Agra Tenancy Act, 1926, that the plaintiff who sues for recovery of arrears of rent must himself be the landholder. Serial No. 4, group A, in the fourth schedule of the Act makes it clear that a suit by an assignee for recovery of arrears of rent is cognizable by the revenue court. The word "assignee" in this serial number must mean an assignee of the arrears of rent and not an assignee of an interest in land; for, an assignee of the landholder's interest in the land becomes himself the landholder and a suit by him would be a suit by the landholder.

Messrs. *S. N. Seth* and *P. M. L. Verma*, for the appellant.

Mr. *S. B. L. Gaur*, for the respondent.

SULAIMAN, C.J.:—This is an appeal under the Letters Patent from a judgment of a learned Judge of this Court affirming the decrees of the courts below passed in a suit for arrears of rent brought by an assignee of rent due to occupancy tenants from a sub-tenant. It appears that Bir Bal and Pati were occupancy tenants who had sub-let the lands to their sub-tenant Nathu Lal and rents were due from Nathu Lal for the years 1333 to 1335F. After the rents had fallen due, the occupancy tenants sold the arrears of rent to the present plaintiff Kewal Ram who brought the suit in the revenue court. The defence was that the rents had already been paid to the occupancy tenants and that the sale deed in favour of Kewal Ram was without consideration. No objection was taken that the revenue court

*Appeal No. 47 of 1932, under section 10 of the Letters Patent.

1934

NATHU LAL v. KEWAL RAM

Sulaiman, C.J.

had no jurisdiction to entertain the suit. The two pleas were overruled and the claim was decreed by the first court. On appeal before the District Judge, again no point was taken that the suit was not cognizable by the revenue court; only the pleas taken in the written statement were pressed, which were rejected.

In second appeal in the High Court, a point was taken for the first time that the revenue court had no jurisdiction to entertain the suit inasmuch as the plaintiff had merely acquired the right to recover the debt and was not a landholder. The learned Judge has overruled this objection on the ground that the point was not taken in the trial court and the defect, if any, was cured by section 268 of the Agra Tenancy Act. It does not appear to have been urged before the learned Judge that the case, if not cognizable by the revenue court, was cognizable by a court of small causes and that therefore no appeal would have lain to the District Judge and accordingly section 268 was inapplicable.

These points however are urged before us in this Letters Patent appeal. As the question is one of jurisdiction, we have allowed them to be raised, even though it is such a late stage.

No doubt under the old Rent Act (Act XII of 1881), it was held in some cases by this Court that a suit brought by an assignee of rent was cognizable by the civil court and not by a revenue court: *Ganga Prasad* v. *Chandrawati* (1) and *Antu Singh* v. *Ajudhia Sahu* (2). But in a case arising under the Agra Tenancy Act (Act II of 1901) a single Judge of this Court in *Kanhai Ram* v. *Sukhdeo* (3) did not follow these earlier rulings on the ground that they were no longer applicable, in view of a different language employed in the Tenancy Act. TUDBALL, J., distinctly held that a civil court had no jurisdiction to entertain a suit for arrears of rent assigned to the plaintiff by certain occupancy tenants to whom it is payable,

(1) (1884) I.L.R., 7 All., 256. (2) (1887) I.L.R., 9 All., 249.
(3) (1913) 12 A.L.J., 98.

1934

NATHU LAL v. KEWAL RAM

Sulaiman, C.J.

and that such a suit is purely and simply a suit to recover from the defendant a sum of money which is alleged to be due on account of the rent of his holding and is a suit of the nature contemplated by the Tenancy Act, of which only the revenue court can take cognizance. The learned Judge further held that such a suit not being cognizable by a court of small causes, a second appeal was not barred. It seems to me that the position has now been made much clearer by the legislature. Generally speaking, the policy underlying the new Tenancy Act seems to be to transfer all suits of a nature in which disputes arise regarding rents and holdings to revenue courts. Now, suits brought against grove-holders and thekadars are triable by the revenue courts only.

The learned advocate for the appellant contends before us that rent as defined in section 3(3) is whatever is to be paid or delivered by a tenant for land held by him, and a tenant is defined in sub-section (6) as a person by whom rent is, or but for a contract, express or implied, would be payable. It is then argued that both these definitions necessarily imply the assumptions that rent should be payable to the landholder and that it should be payable by the tenant to the landholder. It is therefore inferred that if the plaintiff in the suit happens to be a person other than the landholder for the time being, the amount claimed is not rent at all. But this argument proceeds on the fallacious assumption that a rent sought to be recovered must be one which is payable by the defendant tenant to the plaintiff landholder. Looking at section 132, under which suits for recovery of arrears can be filed, there is no restriction that the plaintiff who sues must himself be the landholder. There is no reason why his successor in right, title or interest should not be able to sue, as provided in section 3(1).

The point becomes absolutely clear if one examines the fourth schedule, group A, serial No. 4 under which suits for arrears of rent, or where rent is paid in kind for the money equivalent of such rent, including suits

1934

NATHU LAL v. KEWAL RAM

by an assignee and suits for arrears due to a person who has ceased to be a landholder, have to be filed in the revenue courts only.

There is no force in the contention that the schedule cannot override the substantive provisions of the Act. As a matter of fact section 230 expressly confers exclusive jurisdiction on the revenue courts and ousts the jurisdiction of civil courts as regards all suits and applications of the nature specified in the fourth schedule. It therefore follows that if the fourth schedule specifies the nature of a suit which should be brought in the revenue court, the civil court has no jurisdiction to entertain such a suit.

Sulaiman, C.J.

It is to be conceded on behalf of the appellant that a suit brought for arrears of rent due to a person who has ceased to be a landholder must necessarily be brought in the revenue court. The position in his case is very much similar to the present case because the plaintiff is not a landholder for the time being. He is an assignee in respect of arrears of rent which were due from a tenant to a landholder when they fell due, but they are not sought to be recovered by a person who is a landholder at the time of the suit.

The words "an assignee" in this serial number must necessarily mean an assignee of the arrears of rent, for there are no words here like "an interest in land". It would therefore follow that a suit brought by an assignee of rent, just as much as a suit brought by a person who has ceased to be a landholder, is a suit which falls in group A of the fourth schedule and must be instituted in the revenue court. It is significant that although in other sections like section 99 there is an express mention of the person who can sue as plaintiff, there is no such reservation in section 132. Indeed, there is no section in the Agra Tenancy Act which lays down that the plaintiff in a suit for recovery of arrears of rent must be a landholder who owns land at the time. The reason obviously is that the suit is for recovery of arrears of

1934

NATHU LAL v. KEWAL RAM

rent for a past period and may well be brought by a person who at the time of the suit has ceased to be a landholder of the holding.

Sulaiman, C.J.

In this view of the matter, it is not necessary to consider whether if the revenue court had no jurisdiction, section 268 of the Agra Tenancy Act would have cured the defect. The learned advocate for the defendant urges before us that section 268 would not be applicable, because as soon as the arrears of rent were transferred they ceased to be rent and therefore the suit if brought in the civil court would be cognizable by a court of small causes. But I am not prepared to hold that the assignment of the arrears of rent had the effect of altering its character. So far as the tenant is concerned, his liability continues to be one for the payment of rent on account of land held by him, which was due to a landholder. The mere fact that that landholder has assigned his rights and his representative, whether a vendee or an heir, is suing would not alter the character of the liability. It would still be a suit for recovery of rent other than a house rent and the small cause court would not have jurisdiction to entertain it as laid down in the second schedule, clause (8) of the Provincial Small Cause Courts Act. I would therefore dismiss this appeal.

KING, J.:—I quite agree. I think that the suit must certainly be regarded as a suit for arrears of rent. It has been argued by the learned advocate for the appellant that as the assignee of the rent is not the person to whom the rent was payable, therefore the money which he claims is a mere debt and is not rent when claimed by him. In my opinion this argument cannot be accepted. The money claimed by the plaintiff in the present case was rent payable by the defendant to the occupancy tenants who were his landholders. The money claimed therefore was undoubtedly rent and in my opinion it does not cease to be rent merely because it is sued for by the assignee of the landholders. The plaintiff claims the rent on behalf of the landholders by virtue of the

1934

NATHI LAL v. KEWAL RAM

assignment in his favour, and in my opinion the claim remains a claim for arrears of rent. The right to recover the arrears of rent is a right of property which is transferable and I can find nothing in the Agra Tenancy Act which restricts a suit for arrears of rent to a suit by the landholder himself so as not to include a suit by the assignee of the landholder. This view is strongly supported by the language of serial No. 4 of group A of the fourth schedule of the Agra Tenancy Act, 1926. This serial number provides in express terms for a suit for arrears of rent including suits by an assignee. I think that the word "assignee" can only mean an assignee of the rent and cannot be held to mean an assignee of the interest in land. If a landholder transfers his interest in the land, then the transferee is undoubtedly entitled to sue for arrears of rent because he becomes a landholder himself. This is clear from the language of section 3(1) which shows that the word "landholder" must be deemed to include a successor in right, title and interest of a landholder. The word "assignee" therefore must be taken to mean the assignee of rent. The legislature therefore clearly contemplated a suit by an assignee of rent for arrears of rent under section 132 of the Agra Tenancy Act. Under section 230 of that Act it is clear that a suit of that nature is only cognizable by a revenue court. I agree with his Lordship the CHIEF JUSTICE that the appeal should be dismissed.

King, J.

TESTAMENTARY JURISDICTION

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice King

IN THE GOODS OF SUKHI SUNDARI DASI*

1934
April, 5

Succession Act (XXXIX of 1925), sections 222, 224—Executor, appointment of—Appointment by necessary implication—Expressly appointed executor authorised to nominate another—Probates, successive grants of.

*Testamentary Case No. 14 of 1900.