

PETITIONER:
HARI SHANKER

Vs.

RESPONDENT:
BOARD OF REVENUE, U.P. & ORS.

DATE OF JUDGMENT 24/09/1987

BENCH:
KANIA, M.H.
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KANIA, M.H.
REDDY, O. CHINNAPPA (J)
SHETTY, K.J. (J)

CITATION:
1987 AIR 2189 1988 SCR (1) 328
1987 SCC Supl. 236 JT 1987 (3) 651
1987 SCALE (2) 671

ACT:

United Provinces Tenancy Act, 1939-S. 171 read with s. 40-The question of termination of sub-tenancy should not be mixed up with the question of recovery of possession of land.

HEADNOTE:

Under s. 171 read with s. 40 of the United Provinces Tenancy Act, 1939, if a tenant sub-lets the land to a 'sub-tenant' and the sub-lease continues for more than five years, the 'land holder' is entitled to eject both the tenant and the sub-tenant from the land held by them. However, tenants are entitled to retain possession of land for certain periods in terms of provisions of s. 295-A of the Act and certain notifications issued by the State Government under s. 10 of the Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950, notwithstanding anything contained in any law for the time being in force.

The appellant, Hari Shanker, the 'land holder' of the land in question, filed a suit under s. 171 of the United Provinces Tenants Act, 1939 against his 'expropriatory tenant'. Habib, on the ground that he had sub-let the land for more than five years to a 'sub-tenant', Ida, in contravention of s. 40 of the said Act. The suit was decreed in favour of Hari Shanker and Habib was given the option to apply for ejectment of Ida and resume occupation of the land in terms of the proviso to s. 171. On an appeal filed by Ida, the Additional Commissioner set aside the decree and dismissed the suit. Allowing the second appeal filed by Hari Shanker, the Board of Revenue restored the decree of the Trial Court. Ida's writ petition against that order was dismissed by a Single Judge of the High Court. Meanwhile, Hari Shanker had applied for execution of the decree and the objection filed thereto by Ida was dismissed, though the application for execution itself was still pending. Habib also filed an application against Ida as contemplated by the proviso to s. 171 of the Act. Ida's appeal against the order aforesaid of the Single Judge and the writ petitions filed by Habib and Ida against orders passed in execution proceedings were heard together by the Division Bench of the

High Court which allowed them and dismissed the suit of Hari Shanker.

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Allowing the appeals,

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HELD: The Division Bench of the High Court mixed up the question of termination of the sub-tenancy with the question of recovery of possession. It is common ground that Habib was a "sub-tenant" of Hari Shanker in respect of the suit land. He granted a "sub-tenancy" to Ida which was from year to year. The "sub-tenancy" was created in 1943 and it admittedly continued for a period of more than 5 years. It is not disputed that the said "sub-tenancy" was not terminated by Habib in spite of the provisions of s. 40 of the United Provinces Tenancy Act, 1939. It may be true that even if the sub-tenancy had been terminated Habib might not have been able to recover possession of the suit land from Ida but that does not affect the question of the continuance of the "sub-tenancy". As the said "sub-tenancy" contravened the provisions of s. 40, Hari Shanker was clearly entitled to file a suit as contemplated by s. 171 of the said act against Habib as well as Ida on the ground that the tenant Habib has sub-let the suit land otherwise than in accordance with the provisions of the said Act, namely, in excess of 5 years. There is, on the record, no defence to that suit which was rightly decreed by the Board of Revenue. [333D-H I

The question whether Habib is in a position to evict Ida and obtain possession of the suit land is a question which will have to be decided in the application filed by Habib against Ida for the eviction of Ida from the suit land and recovery of possession thereof. Similarly, the question as to whether the appellant, Hari Shanker, has become entitled to execute the decree in the suit to which he is entitled will have to be disposed of in the application filed by Hari Shanker against Habib as well as Ida. All these applications, we understand, are pending before the relevant authorities and they will have to be decided according to law. However, in our opinion, there is no doubt that in the circumstances set out above. Hari Shanker is entitled to the decree which the Board of Revenue passed in his favour and which was upheld by the learned Single Judge. [333H; 334A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. Z37 to 239 of 1974.

From the Judgment and order dated 13.3.1973 of the Allahabad High Court in Special Appeal Nos. 394 and 418 of 1970 and Writ Petition Nos. 613 and 910 of 1971.

R.R. Agarwal, Manoj Saxena and R.D. Upadhyaya for the Petitioners.

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A.K. Gupta for the Respondent.

The Judgment of the Court was delivered by

KANIA, J. These appeals are directed against the judgment of a Special Bench comprising two learned Judges of the High Court of Judicature at Allahabad in Special Appeal No. 394 of 1970 along with Special Appeal No. 418 of 1970, Writ Petition No. 613 of 1971 and Writ Petition No. 910 of 1971.

The facts giving rise to these appeals are as follows:

Hari Shanker, the appellant before us, is a "land holder" within the meaning of said expression in the United

Provinces Tenancy Act, 1939 (referred to hereinafter as "the said Act"). On 1st February, 1961, Hari Shanker filed a suit as contemplated under Section 171 of the said Act against one Habib Ahmad, who was his tenant in respect of the land in suit on the ground that in 1943 Habib had sub-let the suit land to his "sub-tenant", Ida, and the said sub-lease was for more than five years and hence illegal and in contravention of Section 40 of the said Act. The said suit was contested by Habib but a decree was passed in favour of Hari Shanker in that suit on 18th November, 1961. Under the decree Habib was given an option to apply for the ejectment of Ida within one month and resume occupation of land in dispute in terms of the proviso to Section 171. On an appeal filed by Ida, the "subtenant", the aforesaid decree was set aside by the Additional Commissioner on 18th April, 1962 and the suit of Hari Shanker was dismissed. Hari Shanker filed a second appeal which was allowed by the Board of Revenue by its judgment dated 13th March, 1963/17th April, 1964 and the decree of the Additional Commissioner was set aside and that of the Trial Court was restored. Ida challenged the aforesaid decision of the Board of Revenue by way of Civil Miscellaneous Writ No. 2386 of 1964. That writ petition was dismissed on 26th March, 1970 by a learned Single Judge of the Allahabad High Court and Special Appeals Nos. 394 and 418 of 1970 were filed in the said High Court against the said judgment of the learned Single Judge. After his suit was decreed by the Board of Revenue, Hari Shanker filed an application for execution of the decree in which an objection was filed by the "sub-tenant", Ida, which was dismissed by the Revenue authorities but, we are informed, the said application itself has not been finally disposed of. Habib also filed an application dated 16th August, 1964 against Ida as contemplated under Section 171 to the proviso of the said Act. According to Habib, the said application has not so far been

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decided on merits. Writ Petitions Nos. 613 of 1970 and 910 of 1971 A were filed by Habib and Ida respectively against the orders passed by the Revenue authorities in execution. The said Special Appeals and Writ Petitions were heard together and decided by a Division Bench of the Allahabad High Court in the impugned judgment.

It may be mentioned here that it is common ground that Habib is an "ex-proprietary tenant" for the purposes of Sec. 40 of the said Act and Ida is his "sub-tenant" in respect of the said land within the meaning of the said term in the said Act. The Division Bench of the Allahabad High Court set aside the judgment of the learned Single Judge and allowed the Special Appeals as well as the Writ Petitions. They set aside the order of the Board of Revenue decreeing the suit of Hari Shanker for ejectment of Habib & Ida under Section 171 of the said Act and dismissed the said suit. It is against this judgment that the present appeals are directed. As the facts are common and the appeals are against a common judgment, we propose to dispose them of by a common judgment.

We may, at this stage, take note of the relevant provisions of the said Act and certain notifications issued by the Government of Uttar Pradesh which are material for our purposes. The relevant portions of the said Act run as follows:

"Section 40: (1) No occupancy tenant in Agra, or exproprietary tenant or hereditary tenant shall sub-let the whole or any portion of his holding for a term exceeding five years, or within three

years or any portion of such holding being held by a sub-tenant."

"Section 47: Except as otherwise provided in sub-section 1 (3) and sub-section (4) the extinction of the interest of a tenant, other than a permanent tenure-holder or a fixed rate tenant, shall operate to extinguish the interest of any tenant holding under him."

"Section 171: (1) If a tenant transfers, or sub-lets, the whole or any portion of his holding otherwise than in accordance with the provisions of this Act, and the transferee or sub-lessee has entered into possession in pursuance of such transfer of sub-lease both the tenant and any person who may have thus obtained possession of the whole or any part of the holding shall on the suit of land-

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holder be liable to ejectment from the area so transferred or sublet at the date of the institution of the suit.

Provided that, in the case of a voidable sub-lease, if the suit succeeds, the court shall pass a decree permitting the tenant to apply in the same proceedings within a time not exceeding one month from the date of the decree, for the ejectment of the person in whose favour the voidable sub-lease has been made, and directing that if the tenant so applies and if he ejects such person and resumes occupation of the land within such further time as the court, either in the decree itself or by means of a subsequent order, may fix having regard to the provisions of section 181, the decree shall not be executed against the tenant except in respect of costs. In such a case, the decree shall direct that if the tenant either fails to apply for the ejectment of such person within the time fixed in this behalf or fails to resume occupation within the further time allowed by the court for that purpose, the tenant as also the sub-lessee shall be ejected from the area sub-let at the date of the institution of the suit."

"Section 295-A: Notwithstanding any contract to the contrary or anything contained in this Act or any other law for the time being in force every person who on the date of the commencement of the United Provinces Tenancy (Amendment) Act, 1947, is a sub-tenant shall, subject to the provisions of the proviso to sub-section (3) of Section (7) of the United Provinces Tenancy (Amendment) Act, 1947, be entitled to retain possession of his holding for a period of five years from that date, and for this period nothing in sub section 92) of Section 44 or Section 171 shall render the landholder of such-tenant liable to ejectment under the provisions of section 171."

Section 10 of the Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950 inter alia provides that notwithstanding anything contained in any law for the time being in force, all suits, applications or proceedings of the categories specified in the Schedule to the said Amendment Act of 1950 under Section 10, pending on the date of the commencement of that Act or which might thereafter be instituted, presented or commenced shall be and remain stayed for so long as the said Amendment

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Act of 1950 remains in force. The said Amendment Act came into force in 1950. There is a proviso to the said Section which empowers the State Government by notifications to declare that such categories of suits, applications proceedings and in such local area as the State Government might specify which are stayed under Section 10 shall cease to remain stayed. The State Government was also empowered to reimpose the stay under a second proviso to the said Section. A perusal of Category III of the said Schedule shows that the suits, applications and proceedings under Sections 63, 114, 117, 175 and under Sections 180 and 181 of the U.P. Tenancy Act, 1939 to the extent set out in the Schedule were stayed under Section 10. The rest of the provisions in the said Schedule are not material for our purposes. The stay in respect of suits, applications and proceedings in respect of categories I, II & III in the said Schedule to the said Amending Act VII of 1950 was lifted by a notification dated June 30, 1953. The stay was, however, reimposed by a notification dated January 23, 1953 in respect of suits, applications and proceedings under Section 175 and 181 to the extent provided therein.

In our view, these appeals can be very shortly disposed of. It is common ground that Habib was a "sub-tenant" of Hari Shanker in respect of the suit land. He granted a "sub-tenancy" to Ida which was from year to year. The "sub-tenancy" was created in 1943 and it admittedly continued for a period of more than 5 years. It is not disputed that the said "sub-tenancy" was not terminated by Habib in spite of the provisions of Section 40 of the said Act, namely, the United Provinces Tenancy Act, 1939. It may be true that even if the sub-tenancy had been terminated Habib might not have been able to recover possession of the suit land from Ida but that does not affect the question of the continuance of the "sub-tenancy". As we have pointed out that "sub-tenancy" was from year to year and on the expiry of the period of sub-lease, Ida continued to hold over as "sub-tenant" on the same terms & conditions from year to year. The "sub-tenancy" was, therefore, continued in excess of five years and thus was in violation of the provisions of Section 40 of the said Act. As the said "sub-tenancy" contravened the provisions of Section 40, Hari Shanker was clearly entitled to file a suit as contemplated by Section 171 of the said Act against Habib as well as Ida on the ground that the tenant Habib has sub-let the suit land otherwise than in accordance with the provisions of the said Act, namely, in excess of 5 years. There is, on the record, no defence to that suit which was rightly decreed by the Board of Revenue. The question whether Habib was in a position to evict Ida and obtain possession of the suit land is a question which will have to

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be decided in the application filed by Habib against Ida for the eviction of Ida from the suit land and recovery of possession thereof. Similarly, the question as to whether the appellant, Hari Shanker, has become entitled to execute the decree in the suit to which he is entitled will have to be disposed of in the application filed by Hari Shanker against Habib as well as Ida. All those applications, we understand, are pending before the relevant authorities and they will have to be decided according to law. However, in our opinion, there is no doubt that in the circumstances set out above, Hari Shanker is entitled to the decree which the Board of Revenue passed in his favour and which was upheld by the learned Single Judge. In our opinion, the learned Judges of the Allahabad High Court who decided the aforesaid Special Appeals and Writ Petitions have mixed up the

question of termination of the sub-tenancy with the question of recovery of possession.

In the result, the aforesaid Civil Appeals are allowed and the order of the learned Single Judge of the Allahabad High Court dated 26th March, 1970 is restored. We may clarify that the decree passed by the Board of Revenue in favour of Hari Shanker is restored. Looking, however, to the facts and circumstances of the case, there will be no order as to costs.

H.L.C.

Appeals allowed.

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JUDIS