

## **Sultan And Ors. vs Ganesh And Ors. on 9 February, 1988**

**Equivalent citations: AIR1988SC716, JT1988(1)SC277, 1988(1)SCALE304, (1988)1SCC664, 1988(1)UJ442(SC), AIR 1988 SUPREME COURT 716, 1988 (1) SCC 664 (1988) 1 JT 277 (SC), (1988) 1 JT 277 (SC), (1988) 1 JT 277 (SC) 1988 (1) SCC 664, 1988 (1) SCC 664**

**Bench: G.L. Oza, Sabyasachi Mukharji**

### **JUDGMENT**

OZA, J.

1. This appeal on special leave has been filed by the appellant against the judgment and decree passed by Rajasthan High Court in Civil Second Appeal No. 267/81 wherein the concurrent judgment of the two courts below was maintained.

2. Brief facts material for disposal of this appeal are that the respondent-plaintiff purchased a plot of land No. A-11 measuring 50' x 90' in Rambabu-Ka-Aahata situated at Station Road Jaipur which is now known as Sen Colony. After the death of Rambabu Sen, his son K.K. Sen became the owner of colony, the land was divided into plots and the scheme was approved by the Municipal Council.

3. Father of the present appellants, Sultan and plaintiffs were living in Rambabu-Ka-Aahata as tenants. Late Johari took on rent a piece of land from K.K. Sen and executed a rent note on 23.1.1949. This rent note came into force from 1.1.1949 and was registered on 18.2.1949. Shri K.K. Sen executed a registered sale deed dated 15.4.1957 in favour of the plaintiff respondents. Consequently the appellants became the tenants of the respondents from 15.4.1957. The plaintiff respondents wanted to build a house for themselves on this disputed land but the present appellants claimed to be the owners of the land. Consequently the respondents filed a suit for permanent injunction against the present appellants which was subsequently withdrawn on 6.7.1967 and the present suit for declaration of title of the respondents as the owners of plot No. A-11 in the Sen Colony and for possession of such portion of this plot which was in occupation of the defendants-appellants and the rent and damages was filed. The present appellants in their written statement asserted that they were not the tenants of K.K. Sen or any other person and K.K. Sen had no right to sell the plot and also claimed adverse possession for more than 12 years and therefore sought the dismissal of the suit filed by the respondent-landlord.

4. Learned trial court framed a number of issues and after recording the evidence of both the parties decreed the suit of the respondents-plaintiffs holding that they were the tenants of K.K. Sen and decree for possession and rent was passed in favour of the respondents. The present appellants preferred an appeal in the court of Additional District Judge No. 1 Jaipur City who after hearing the

parties also confirmed the decree passed by the trial court and dismissed the appeal filed by the appellants. Thereafter the appellants filed a second appeal before the High Court and by the impugned judgment the High Court dismissed this appeal and it is thus that the present appeal is before us.

5. The questions which were raised before the High Court were in respect of lease executed by the appellants and the right of the respondent-landlord to seek the relief as prayed in the present suit. The learned Judge of the High Court went into evidence and referring to the statement of Sultan, the present appellant found that he himself admitted that he was a tenant in Plot No. 10-11 and even Johari lather of Sultan in his statement admitted that he was a tenant of K.K. Sen in Plot No. 10-11 and after considering all these facts, the learned High Court came to the conclusion that although the appellants were in possession of some portion of the land which did not form the part of the lease in their favour but in view of Section 108 of the Transfer of Property Act, it will not make much difference and the plaintiff-respondents were therefore held entitled to a decree for possession. The learned Judge therefore came to the conclusion that in view of the fact that they were tenants of K.K. Sen, they can not claim title on the basis of adverse possession merely because they encroached upon a portion of land while they were tenants of K.K. Sen and on this ground the appeal filed by the appellants was dismissed.

6. In the special leave petition filed in this Court, four grounds were urged. It was contended that in a suit for declaration and possession, direction for recovery of arrears of rent and eviction also could not be granted. In face of Section 13 of the 1950 Rent Restriction Act and in this context it was also urged that as soon as the court gave a declaration that the appellant was the tenant of the respondent, the civil courts should have stayed its hand and directed the parties to take recourse to 1950 Rent Act and in this context it was contended that the appellants were entitled to the protection under the Rent Act. The other grounds urged was regarding derivation of title on the basis of adverse possession.

7. It is clear that the relationship of landlord and tenant between the appellant and respondent was not admitted. Even before filing of the present suit the appellants disputed the relationship and claimed to be the owners on the basis of adverse possession. In fact it was under these circumstances that when the respondent who purchased this plot of land from K.K. Sen and wanted to construct that the present appellants claimed to be the owners and obstructed the construction and therefore initially the suit for injunction was filed and it appears that the suit was withdrawn and the present suit for declaration of title and possession was filed. In this suit, a decree for mesne profits and rent also was claimed. Therefore the contention that the present appellants tenants could not be evicted in a suit on this ground, does not appear to be justified as in fact the suit was filed on the basis of title and the appellants never raised any plea of protection but relied on adverse possession and in this view of the matter it could not be said that the suit could not be decreed. In fact this plea that the appellant who is the tenant is protected under the provisions of the Rent Act was not raised at any time in the courts below. Even in the judgment of the High Court there is nothing to indicate that such a contention was raised before the High Court.

8. It was contended before us that as one of the grounds for termination of the lease was alleged to be non-payment of rent and as during the pendency of these proceedings the Rajasthan Rent Act was amended and Section 13A was introduced. The appellant ought to have been given this protection under Section 13A, and it was in respect of this contention that reliance was placed on the decision of this Court in *Gyan Chand v. K.B. Lal and Ors.* . In fact so far as the present appeal is concerned, this is not a suit for eviction under the Rent Act but a suit for possession based on title as from the very beginning. So far as the appellant is concerned he denied the relationship of landlord and tenant and claimed to be the owner by adverse possession and therefore at this stage in this appeal before this Court on special leave. The plea on this ground could not be raised. This ground was not raised even before the High Court. In fact in the written statement in reply to the allegation in the plaint that the present appellants were the tenants of Sh. K.K. Sen, it was specifically stated that they were never tenants of Shri K.K. Sen nor they executed any rent note and clearly raised a plea of adverse possession and ownership. In the written statement filed by the appellants no plea in respect of protection under Rent Act was raised and issues framed by the trial court also indicate that no such issue in respect of protection was raised. It is true that as it was alleged by the plaintiffs-respondents that the defendants appellants denied the title of the plaintiffs-respondents even before the present suit was filed and therefore that was mentioned as one of the grounds on which even under the Rent Act the plaintiff is entitled to a decree of eviction and in fact that issue has been found in favour of the plaintiffs-respondents and appellants have continued the denial of title and in fact contested the suit solely on that basis. In this view of the matter it could not be contended that a decree for possession could not be passed when admittedly the appellants did not plead to be tenant seeking any protection and one of the grounds which has been held to be proved is that the defendant-appellant has denied the title of the plaintiff-respondent from the beginning even before the present suit was filed.

9. The question as to whether the appellant is entitled to protection under the Rent Act as has not been raised at any stage it could not be gone into at this stage as it involves disputed questions of fact. The contention therefore advanced on behalf of the appellants can not be accepted.

10. The main plea which has been agitated upto the High Court vigorously has been the ground of adverse possession and denial of the tenancy of K.K. Sen. In this view of the matter we therefore see no reason to entertain this appeal. It is therefore dismissed with costs. The respondents shall be entitled to costs. Counsel fee Rs. 2,000/-.