

## **Pandohi Ahir vs Faruq Khan And Anr. on 11 September, 1953**

**Equivalent citations: AIR1954ALL191, AIR 1954 ALLAHABAD 191**

### **JUDGMENT**

Randhir Singh, J.

1. This is a second appeal from-the judgment of the Civil Judge, Fyzabad, in a suit for possession.
2. The facts of this case are simple. The plaintiff claiming to be a cosharer in certain property including the plots in dispute in this case brought-a suit against defendants 1 and 2 for possession-on the allegations that the plots which belonged to the plaintiff and some other cosharers including defendant 2 had been sold to defendant 1 by defendant 2 as his exclusive property and that the plaintiff was therefore entitled to pos-session of those plots.
3. The defendants contested the suit. They denied that the plaintiff had any share in the property. A plea of jurisdiction was also raised and it was alleged that the suit was not within the cognizance of the civil court.
4. The learned Munsif who heard the case came to the conclusion that the suit was cognizable by the civil Court and also found that the plaintiff and defendant 2 were cosharers in the plots which had been sold by defendant 2 to defendant 1. He also held that defendant 2 had no right to sell specific plots to defendant 1 and on these findings he passed a decree for possession, in favour of the plaintiff. Defendant 1 then went in appeal to the District Judge and the Civil Judge who heard the appeal concurred with the findings of the trial Court and dismissed the appeal with a slight modification in respect of costs. Defendant 1 has now come up in second appeal.
5. The first point which has been urged on behalf of the appellant is that the suit was not within the cognizance of the civil Court inasmuch as the suit was covered by the provisions of Section 130, U. P. Tenancy Act and in view of the provisions of Section 242 of the Act a suit such as the one which has given rise to this appeal could not be instituted in the civil Court. Section 180 as it stands at present is the result of an amendment made in 1947. Before the amendment the section stood as follows :

"A person taking or retaining possession of a plot or plots of land otherwise than in accordance with the provisions of the law for the time being in force and without the written consent of the person entitled to admit him as tenant shall be liable to

ejectment under this section, on the suit of the person so entitled." The section was amended by Section 18, U. P. Tenancy (Amendment) Act 10 of 1947 and two explanations were added to the section besides some other amendments.

Explanation I added in 1947 runs as follows : "A co-sharer in the proprietary rights in a plot. of land taking or retaining possession of such plot without the consent of the whole body of co-sharers or of an agent appointed to act on behalf of all of them shall be deemed to be in possession of such plot otherwise than in accordance with the provisions of the law within the meaning of this section."

6. After the amendment to the U. P. Tenancy Act in 1947 and the addition of explanation I there is no doubt that a suit by one cosharer against another who has entered into possession of joint land without the consent of all the co-sharers can be maintained in the revenue court and such a suit would be exclusively cognizable by the revenue Court in view of the provisions of Section 242, U. P. Tenancy Act. It remains, however, to be seen if even before the amendment such a suit was exclusively within the cognizance of the revenue Court and this would depend entirely on the meaning of the unamended section. As mentioned above a suit against a person who was in possession otherwise than in accordance with law and secondly without the written consent of the person entitled to admit him. was cognizable by the revenue Court. The question for decision, however, would then be if a cosharer in possession of a plot of land belonging jointly to several co-sharers could be said to be a person in possession contrary to law.

A co-sharer in peaceful possession of joint land cannot be said to be in possession of land contrary to the provisions of law and the meaning now assigned to Section 180, by the explanation could not have been imported into the section before the explanation was added in 1947. A suit by one cosharer against another who was in peaceful possession of a particular plot of land could not, therefore, be covered by Section 180 as it stood before the amendment of 1947. The suit which has given rise to this appeal was instituted in 1945 and the rights both substantive and procedural would be governed by the law as it stood on the date the suit was instituted. The suit was, therefore, rightly instituted in the civil Court.

7. The second point which has been urged on behalf of the appellant is that the Courts below were not justified in passing a decree for exclusive possession of the plots in dispute in favour of the plaintiff. There seems to be considerable force in this contention inasmuch as a cosharer who has a grievance that another cosharer has entered into exclusive possession of a plot of land cannot himself be put into exclusive possession of the plot to the exclusion of others. At best the plaintiff was entitled to a decree for joint possession over the plots in dispute.

The prayer clause in the plaint was not properly worded. The Courts below have also not given due consideration to the decree which should have been passed in this case. The plaintiff had no right to claim or get possession of the plots in dispute to the exclusion of the defendants. Although defendant 2 had no right to transfer specific plots to defendant 1, he had every right to "transfer his share in the plots to defendant 1 and the sale deed could not be held to be invalid in respect of the transferable share of defendant 2 in favour of defendant 1. Defendant 1, therefore, also became a

cosharer in the plots and if he happened to be in possession of those plots, he could not be ejected from them except by a suit for partition. Defendant 1, however, also could not deny the plaintiff's right to possession and the plaintiff under the circumstances was, therefore, entitled to a decree for joint possession only.

8. No other point has been pressed in argument.

9. The appeal is, therefore, allowed to this extent that the claim of the plaintiff is decreed for joint possession of the plots detailed in the plaint. The parties shall bear their own costs throughout.