

# **Bhagwati Chaube vs Ram Adhar Chaube And Ors. on 7 December, 1951**

**Equivalent citations: AIR1953ALL219, AIR 1953 ALLAHABAD 219**

## **JUDGMENT**

Mootham, J.

1. This is a plaintiff's first appeal from an order of the learned Civil Judge of Gorakhpur.
2. The plaintiff had filed a suit on the 19-12-1946, in the court of a Munsif for a declaration that he was entitled to exclusive possession of certain plots of land or alternatively for possession of those plots, it is unnecessary to state the circumstances which led up to the filing of this suit, for, it is not in dispute that at the time the suit was filed, it was property filed in the court of the munsif, it is also common ground that had the suit been filed after 14-6-1947 the date upon which the U. P. Tenancy Amendment Act (Act 10 of 1947) came into force the suit would have had to be filed in a revenue court.

The suit, as I have said, was filed in December 1946. It was decided by the learned Munsif on 5-2-1948. The plaintiff appealed from the decision of the Munsif to the court of the District Judge and cross-objections were filed by the defendants who are the present opposite parties. The learned District Judge transferred the case to the Court of the Civil Judge, The learned Civil Judge, being of opinion that the effect of the amending Act was to divest the civil court of jurisdiction set aside the judgment and decree of that Court and directed that the plaint be returned to the plaintiff for presentation to a revenue Court. It is from that order that the present appeal has been filed,

3. Section 31 of the amending Act provides, 'inter alia' that all suits "pending under the said Act", meaning the U. P. Tenancy Act 1939, shall be decided in accordance with the provisions of that Act as amended by the amending Act, and it is the case for the appellant that the plaintiff's suit was not a suit "pending under the said Act", that it was therefore not affected by the provisions of Section 31 of the amending Act, and the jurisdiction of the civil Court remained unaffected. It appears to me clear that as the suit had been filed in the Court of a Munsif, and as it is not in dispute that it was properly filed in that Court it could not be a suit pending under the Tenancy Act which would necessarily have had to have been filed in a revenue court. I am of opinion therefore that Mr. Shambhu Prasad's submission on this point is correct.

4. It has however been argued by Mr. Kapoor that apart altogether from Section 31 of the amending Act the effect of that Act was, as from the date upon which it came into operation, to take away from the civil Courts their jurisdiction in all cases which, had they been filed after the amending Act came

into operation, would have had to be filed in a revenue Court. I do not think that submission is well founded, for it appears to me that if it were correct then Section 31 of the Act would be wholly unnecessary; and that I think is the view taken by a bench of this Court in -- 'Basdeo Singh v. Bharat Singh', AIR 1949 All 542, in which the Court said: "It is obvious that the provisions of Section 31(1)"

-- that is of the amending Act -- "apply to appeals and revisions under the U. P. Tenancy Act and not to those under the Code of Civil Procedure."

The matter before the Court related to an appeal, but the provisions of Section 31 apply not only in the case of appeals and revisions but also to proceedings in suits. In my opinion, therefore, the effect of the amending Act was not to divest the civil Court, of the jurisdiction which it admittedly had in this case prior to the coming into operation of that Act and that this appeal must succeed.

5. I, therefore, set aside the order of the learned Civil Judge dated 1-9-1948 and direct that the case be sent back to the lower appellate Court for hearing in the ordinary course.

6. The appellant is entitled to his costs.