

## **Mt. Ram Piari vs Nawab Singh And Ors. on 21 March, 1950**

**Equivalent citations: AIR1950ALL496, AIR 1950 ALLAHABAD 496**

### **JUDGMENT**

Agarwala, J.

1. This is a plaintiff's appeal arising out of a suit for fixation of rent under Section 94, U. P. Tenancy Act.
2. The defendants-respondents have been in possession for more than 12 years. They have been recorded in the Khatauni as being in possession without settlement of rent. The plaintiff's case was that the defendants-respondents were tenants and that a reasonable rent should be fixed on the holding in their possession. The defendants claimed to have acquired proprietary title by adverse possession. An issue on proprietary title was sent to the civil Court. The Munsif decided that proprietary title has not been acquired. The revenue Court thereupon fixed the rent. The defendants went up in appeal to the District Judge who has held that the defendants have acquired title to the land by adverse possession.
3. In this second appeal the only point is whether on the facts found it can be said in law that the defendants have acquired proprietary title in land by adverse possession for more than 12 years.
4. It is true that prima facie possession is evidence of title. Under Section 110, Evidence Act, where a person is found to be in possession of a certain piece of land, he is presumed to be the owner of it and the burden of proving that he is not the owner is on the person who affirms that he is not the owner. This section applies to the question of ownership and not adverse possession.
5. In the present case, there is no doubt that the plaintiff is the owner of the Khewat in which the plot in dispute is situated. The title therefore to the land is not in dispute and Section 110 has no application to the case. When title vests in the plaintiff, the burden of proving that the possession of the defendant is adverse is on the defendant. But here again, there is another presumption of law and that is that prima facie every possession is deemed to be adverse. This presumption is apart from the presumption that arises under Section 110, Evidence Act.
6. This presumption, however, arises in a case when the possession of a person is in the capacity of an owner. If acts, which can be attributable to the ownership of the land alone, are performed by the man in possession, this general presumption will be raised. But in an agricultural area where the zemindar lets out land to tenants for agricultural purposes and a person is found to be cultivating plot, no such general presumption can be raised because the possession of the defendant is merely to the extent of cultivating the land which is primarily the function of a tenant. This view is supported by a reference to the provisions of the U. P. Tenancy Act.

7. Under Section 180, U. P. Tenancy Act, where a person is found to be in possession of a certain plot of land without the consent of the land-holder for more than a certain period fixed by the Act, the person so found to be in possession becomes an hereditary tenant of the land. He does not become its proprietor by adverse possession. This provision in the U. P. Tenancy Act shows that where a person is in possession by cultivating a plot or plots of land in an agricultural area, the presumption is that he is prescribing for a tenancy right, although there is no contract of tenancy between him and the owner of the land.

8. The entries in the village papers are also evidence of the real nature of the possession of the person in possession. When these entries indicate that the person in possession is cultivating the land in the capacity of a tenant, though without settlement of any rent, a presumption can be raised that the nature of the possession is in the capacity of a tenant and not in the capacity of a proprietor.

9. In the present case there is absolutely nothing to show that the defendants-respondents ever claimed or set up proprietary title in the land in dispute. As such, it will be presumed that they were claiming to hold the land as tenants. The lower appellate Court has remarked that the defendants-respondents' statement that they were in possession as proprietors must be accepted. The question is not what the defendants-respondents say now when the suit for fixation of rent is brought against them. The question is what claim they put forward when they commenced their possession over the plots or, at any rate, what claim they put forward for 12 years prior to the suit. There being no claim put forward by the defendants-respondents that they were holding the land as proprietors, there could be no extinguishment of the plaintiff's title over the land by adverse possession for more than 12 years.

10. In *Bhagwan Bux Singh v. Ganesh Bux Singh*, 1937 R. D. 572, on similar facts a learned Judge of the Lucknow Chief Court held that the possession of the defendant would be deemed to be in the capacity of a tenant. The learned Judge observed that the mere fact that a person had been in possession for a long time or that he had not paid any rent for the land could not establish title by adverse possession,

11. A similar view was expressed in *Iqbal Ali v. Humayun Qadar*, A.I.R. (28) 1941 Oudh 436 : (194 I. C. 50.)

12. I am, therefore, of opinion that the plaintiff's title to the land subsists and that it has (not?) been extinguished by the adverse possession of the defendants. The "plaintiff was, therefore, entitled to have the rent fixed.

13. Accordingly the appeal is allowed, the decree of the lower appellate Court is set aside and that of the Assistant Collector restored with costs throughout.

14. Leave to appeal under the Letters Patent is refused.