

# Ram Sunder Misra vs Triloki Nath Pandey And Ors. on 15 November, 1951

**Equivalent citations: AIR1953ALL217, AIR 1953 ALLAHABAD 217**

## JUDGMENT

Malik, C.J.

1. This is a defendant's appeal in a suit for ejectment under Section 175, U.P. Tenancy Act. The plaintiffs gave a notice of ejectment on 1st July 1944, claiming that the plaintiffs were hereditary tenants of the plots in suit of which the defendant was a subtenant.
2. The defendant filed objections to the ejectment on the ground that he was 'britdari sankalp holder' from 'Shahi' times, his ancestors having purchased this right under a sale deed dated 4th September 1879.
3. The trial Court held that the plaintiffs were hereditary tenants and the defendant was a sub-tenant and decreed the suit on 1st September 1945.
4. The decree was affirmed on 20th March 1946.
5. There was a second appeal filed in this Court in the same year. It came up for hearing before a learned single Judge of this Court on 26th October 1950, who referred it to a bench to decide the effect of certain sections, of the U.P. Tenancy Amendment Act (10 of 1947) on this appeal.
6. Section 26 of this Amendment Act provides that a new Section 295A shall be added to the original Act. According to this Section 295A, "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 U.P. Tenancy (Amendment) Act, 1947, is a sub-tenant shall subject to the provisions of the proviso to Sub-section (3) of Section 27, U.P. 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 (2) of Section 44 or Section 171 shall render the landholder of such sub-tenant liable to ejectment under the provisions of Section 171."

It is urged that by reason of this provision the plaintiffs had no right to eject the defendant till some date in 1952. The appellant no longer disputes the finding that he is a sub-tenant of the plaintiffs, but reliance is placed on this section and it is urged that the plaintiffs cannot eject the defendant till the period mentioned in the section is over. Our attention has been drawn to Section 31 of the Act which makes the Act retrospective and makes it applicable not only to suits to be filed after the Act came into force but to all proceedings --appeals and revisions -- pending on the date of the

commencement of the Act. The said section directs that all appeals and - revisions-have to be decided in accordance with the provisions of the said Act and, where necessary decrees and orders shall be amended in accordance with the said provisions. Section 31, therefore, makes it perfectly clear that the Act is intended to apply to this appeal and if that be so, Section 295A provides that a subtenant shall not be ejected for a period of five years.

7. Learned counsel for the respondent has,, however, urged that the defendant has ceased to be a sub-tenant after the decree passed by the lower appellate Court and, therefore S. 295A is not applicable to him. He has further urged that a decree should be passed in his favour executable in June 1952, the Act having come into force on 14th June 1947. We are afraid neither of these two contentions can be accepted. No doubt the defendant had denied that he was a sub-tenant, but the lower Courts have found that the defendant was a subtenant of the plaintiffs and learned counsel for the defendant has now accepted the position that his client holds that status. The mere fact that a decree was passed for ejectment of the defendant would not change his status and make him a trespasser especially as the decree had not become final and the question of the status of the defendant was still 'sub judice" when the appeal was filed in this Court.

8. As regards the second contention, the Act makes it amply clear that the defendant, being a sub-tenant, is not liable to ejectment for a period of five years from the date the Act came into force. The plaintiffs cannot, therefore, claim that they have now any subsisting cause of action which would entitle] them, to a decree for ejectment. Their cause of action for ejectment would arise on the expiry of a period of five years and we cannot pass a decree in anticipation of the cause of action arising in 1952.

9. The result, therefore, is that this appeal must be allowed and the plaintiffs' suit must fail. The parties, however, in the peculiar circumstances of the case, shall bear their own costs in all the Courts.