

## **Risal And Anr. vs The Government Of The U.P., Lucknow And ... on 26 September, 1955**

**Equivalent citations: AIR1956ALL704, AIR 1956 ALLAHABAD 704, 1956 ALL. L. J. 519**

### **JUDGMENT**

Agarwala, J.

1. This is a special appeal against the judgment, of a learned single judge of this Court dismissing a writ petition.

2. The respondents 3 and 4, Mamraj and Balwant, filed four suits under Section 49, U. P. Tenancy Act against the appellants, Risal and Balwant (this Balwant is not to be confused for respondent) for partition of their half share in the holdings in dispute. The appellants' case was that the aforesaid respondents had only a one-third share and not a half share in the holdings.

All the four suits Were tried together and evidence was recorded only in one of them. They were disposed of by a common judgment, the Assistant Collector holding that respondents 3 and 4 had only a one-third share. These respondents preferred four appeals in the court of the Add-

tional Commissioner who allowed the appeals upon the finding that respondents 3 and 4 had a half share in the holdings. Then the appellants went up in second appeal co the Board of Revenue. During the pendency of these, appeals one Khazan Singh who was a landholder and party in one of the suits only died on 6-8-1952; the landholders in the other suits being still alive.

An application for bringing the heirs of Khazan Singh was made beyond time on 24-3-1953, The Board of Revenue dismissed this belated petition, and thereafter dismissed not only the suit in which Khazan Singh was a party but also the remaining three suits as well. The appellants applied for a review of the judgment but the Board dismissed the review application and confirmed its earlier decision. The appellants then applied to this Court under Article 226 of the Constitution for an order quashing the order of the Board of Revenue and directing it to rehear the appeals, This application was dismissed by a learned single Judge of this Court. Against this order of dismissal this special appeal has been filed.

3. The only point urged before us in appeal is that Khazan Singh having died after a vesting order had been made under Section 6, U. P. Zamindari Abolition and Land Reforms Act, 1951, and he having thereby lost his rights in the land, it was not necessary to bring his heirs on the record; and that the Gaon Sabha was the body that should and could have been impleaded in appeal. Our

attention has been drawn to Rule 7 of the Rules framed under the U. P. Zamindari Abolition and Land Reforms Act.

4. In our opinion the contention of learned counsel for the appellants is well founded. As a result of the vesting order Khazan Singh lost all his rights as a landholder of the holdings in dispute and in his place the State became the landholder.

Under Rule 7, in every suit or proceeding (not being a suit or proceeding stayed or abated under the provisions of Rule 4 or 5) under the U. P. Land Revenue Act, 1901, or the U. P. Tenancy Act 1939, pending on the date of vesting, in which an intermediary is a party, whether as plaintiff or defendant, the Court may, where it considers it necessary in order to enable it effectually and completely to adjudicate upon and settle all questions involved in the suit or proceedings, order the Gaon Sabha to be joined as a party. The Board of Revenue had, therefore, the power to implead the Gaon Sabha as a party to all the four appeals. There is no limitation fixed for impleading the Gaon Sabha as a party.

5. It was urged on behalf of the respondents that Section 49, U. P. Tenancy Act, under which all the four suits were brought, the land-holder was a necessary party, and that the landholder being Khazan Singh his heirs should have been brought on the record. We do not think that this contention has any force.

As already pointed out, after the vesting order, Khazan Singh ceased to be a landholder and the State became the landholder, and thereafter it was the Gaon Sabha which should, if the Board thought it necessary have been brought on the record in order to effectually and completely adjudicate the points of dispute between the parties. There is in our opinion an error apparent on the face of the record, and consequently we have jurisdiction to interfere under the powers given to us under Article 226 of the Constitution.

We, therefore, allow this appeal, set aside the order of the learned single Judge, quash the order of the Board of Revenue in all the four appeals and direct the Board of Revenue to restore the appeals to their original numbers and hear them according to law.

6. We make no order as to costs.