

## **Ajodhia Singh And Ors. vs Ram Phal Singh And Ors. on 23 September, 1953**

**Equivalent citations: AIR1954ALL359, AIR 1954 ALLAHABAD 359**

### **JUDGMENT**

Randhir Singh, J.

1. This is a plaintiffs' second appeal against the concurrent findings of the Courts below.
2. Two of the respondents Nos. 15 and 18 are dead and their legal representatives have not been brought on the record. It is contended on behalf of respondent No. 14 that the appeal has abated as a whole. It is evident from the record that respondents Nos. 15 and 18 did not claim any interest in the land in dispute and the plaintiffs also did not allege that they had any interest in the land in dispute. If their legal representatives have not been brought on the record, this would not adversely affect the merits of the appeal and the appeal has not, therefore, abated against the other parties.
3. The plaintiffs appellants filed a suit for possession of five plots of land situate in village Bahauddinpur in the district of Sultanpur, against defendants 1 to 18 on the allegations that the plaintiffs had been in possession of the plots in dispute for a very long time and had acquired the rights of maurusi tenants under the law and that the defendants had unlawfully taken possession of the plots in July, 1943. Defendants 1 to 14 were said to be some of the proprietors of the land in dispute while defendants 15 to 18 were said to hold no rights in the land in dispute. The suit was contested by the defendants, but the main contest was by defendant No. 14. Defendants 15 and 16 disowned the plots and stated that they had no concern with the plots nor had they entered into possession of these plots. Defendant No. 16 who is the father of defendants 17 and 18 also alleged in the written statement that his sons defendants 17 and 18 had also no concern with the plots in dispute.
4. The defence of defendant No. 14 was that the plaintiffs were not tenants of the land in dispute and had no right to maintain the suit. Pleas of jurisdiction and limitation were also raised. As a question of tenancy was raised, an issue about tenancy was referred to the revenue Court. The revenue Court came to the conclusion that the plaintiffs had been in possession for a very long time with some interruptions but they were not tenants of the land in dispute. On receipt of this finding the learned Munsif dismissed the suit. The plaintiffs then went in appeal. The District Judge concurred with the findings of the trial Court and dismissed the appeal. The plaintiffs have now come up in second appeal.
5. The appeal raises a short but an important point of law. It has been argued on behalf of the appellants that the Revenue Court which decided the issue of the plaintiffs' tenancy failed to take

notice of the provisions of Section 29 of the U. P. Tenancy Act. Section 29 of the U. P. Tenancy Act is as follows:

"Every person belonging to one or another of the following classes shall be a hereditary tenant, and subject to any contract which is not contrary to the provisions of Section 4 shall be entitled to all the rights conferred and be subject to all the liabilities imposed on hereditary tenants by this Act, namely,

(a) every person who is, at the commencement of this Act, a tenant of land otherwise than as a permanent tenure-holder, a fixed rate tenant, a tenant holding on special terms in Oudh, an exproprietary tenant, an occupancy tenant, or except as otherwise provided in this Act as a Sub-tenant or a tenant of sir."

6. Section 29 quoted above, therefore, shows that every person who was at the commencement of the U. P. Tenancy Act of 1939, that is on the 1st January, 1940, a tenant of land became a hereditary tenant. The word "tenant" has been defined in Section 3(23) of the U. P. Tenancy Act of 1939 as follows:

" "Tenant" means the person by whom rent is, but for a contract express or implied would be, payable....."

It has been argued on behalf of the appellants that the plaintiffs being in possession of the land at the commencement of the U. P. Tenancy Act were liable to pay rent to the landlord under Section 127 of the Oudh Rent Act and as such were tenants on that date. In order to appreciate the argument of the learned counsel for the appellants, a reference to Section 127 of the Oudh Rent Act is necessary.

Section 127 of the Oudh Rent Act as it stood on the 1st January, 1940, was as follows:

"A person taking or retaining possession of land without being entitled to such possession may, at the option of the person entitled to eject him as a trespasser, be treated as a tenant, and shall thereupon be liable for rent of that land payable in the previous year, at such rate as the Court may determine to be fair and equitable, but he shall not, in respect of that land, have any of the statutory privileges conferred by this Act."

It is now contended that in view of the provisions of Section 127 of the Oudh Rent Act the plaintiffs were liable to pay rent for the land which was in their occupation and as such they were tenants within the meaning of the word as defined, in Section 3 of the U. P. Tenancy Act. The contention of the respondents is that a person holding land without title could only become a tenant if so treated by the landlord and his liability to pay rent did not arise till the landlord elected to treat him as a tenant.

A plain reading of Section 127 of the Oudh Rent Act as it stood on the 1st January, 1940, clearly shows that a person taking or retaining possession of land without being entitled to such possession could only become liable for rent after he had been treated as a tenant by the landlord. So long as the landlord did not elect to treat him as a tenant his status would continue to be that of a trespasser. In order to clothe a person with the status of a tenant, it was necessary that an option to that effect should be exercised by the landlord. So long as that option was not exercised a person in occupation could not be held liable for payment of rent, and so long as he was not liable under the law for payment of rent, he could not be covered by the definition of the word "tenant".

7. In the present case, the plaintiffs were shown as "bila tasfia lagan" in the last settlement which took place in the year 1343 P. corresponding to 1935-36. A parcha was issued and there is nothing on the record to show that any objection was raised on behalf of the plaintiffs to the description of their status in the settlement papers. The plaintiffs were admittedly not treated as tenants at any time by the landlords and as such they did not become liable for payment of rent under Section 127 of the Oudh Rent Act. Since they were not liable to pay rent under Section 127 of the Oudh Rent Act, not having been treated as tenants by the landlord, they could not become tenants within the meaning of the U. P. Tenancy Act and as such could not become hereditary tenants under the provisions of Section 29 of the U. P. Tenancy Act.

8. Another point urged on behalf of the appellants is that Section 127 of the Oudh Rent Act as it stood before it was amended in 1921 made every person in possession of land occupied without the consent of the landlord liable for the rent of the land and as such the plaintiffs who were in possession before 1921 had become tenants under the provisions of Section 127 as it stood before 1921. The logical conclusion, if the arguments of the learned counsel for the appellants are accepted, would be that every trespasser automatically became a tenant of the landlord as soon as he entered into possession of the land without the consent of the landlord. This could evidently not be the intention of Section 127 of the Oudh Rent Act before it was amended.

Although it was not expressly mentioned in that Section before the amendment that it was necessary for the landlord to treat a person as a tenant before making him liable for payment of rent, the implication was there & this implication was amplified in explicit terms by the amendment made in 1921. It would be difficult, therefore, to hold that the plaintiffs had acquired the status of a tenant even before the amendment in Section 127 of the Oudh Rent Act was made in 1921,

9. The plea of jurisdiction which was raised in the trial Court was given up and that plea has not been pressed in appeal.

10. No question of limitation also arises in this case as the suit was brought well within time and nothing has been shown in support of the plea of limitation which was raised in the trial Court.

11. In view of the findings on the point of law referred to above, it is not necessary to go into the documentary evidence filed in this suit and referred to by the learned counsel for the appellants, but a brief reference to it may be made. (His Lordship after doing so proceeded to state:) All these documents at best show that the plaintiffs and their predecessors had been in possession of the plots

with some interruptions for quite a long time, but the main question was, if they had acquired the status of a tenant, which has been negatived by both the Courts below. In view of the position of law discussed above, the plaintiffs have failed to establish that they were tenants, of the land in dispute and as such entitled to eject the proprietors. This finding of the two Courts below appears to me to be correct. As a result the appeal is dismissed. I make no order as to costs.

12. Leave to appeal is granted under Chapter VIII, Rule 5 of the Rules of the Court.