

## **Bans Ali And Ors. vs Mohammad Ali And Ors. on 11 August, 1953**

**Equivalent citations: AIR1954ALL70, AIR 1954 ALLAHABAD 70**

### **JUDGMENT**

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for recovery of possession of two holdings, one in village Lauki and the other in village Shekhapur. The plaintiffs' case was that one Habi was originally a tenant of these holdings. He left three sons, Karimullah, Fakhrullah and Akbar Ali who succeeded him on his death. After the death of Akbar Ali, Mst. Muliman his widow succeeded him as his heir and remained in possession of the property till her death in 1943. The plaintiffs 1 and 2 being the sons of Karimullah and Fakhrullah respectively and plaintiff No. 3 being the grandson of Fakhrullah are now entitled to the holdings on the death of Mst. Muliman, as the reversioners of her husband, Akbar Ali. The suit was instituted in 1945. The plaintiffs claim that the succession to the tenancy was governed by Section 36, U. P. Tenancy Act.

2. The defendants are the sons of Malka daughter of Muliman. Their defence was that Mst. Muliman was a tenant of the holdings in her own right and did not hold possession as an heir of Akbar Ali. They further state that she had obtained two pattas of the holdings in the year 1330F for ten years ending at the end of 1339F and that in whatever capacity she might have entered into possession of the holdings in the beginning she became a tenant in her own right by reason of these two pattas.

3. The trial Court dismissed the suit with regard to the holding in village Lauki but decreed it with regard to the holding in village Shekhapur. The defendants were satisfied with this decree and did not appeal. The plaintiffs being dissatisfied with the dismissal of the suit in respect of the holding in village Lauki appealed to the lower appellate Court and succeeded. During the pendency of the appeal in that Court, Majeed defendant, son of Malka died and his heirs were brought on the record. The lower appellate Court held that Muliman entered into possession of the holding as an heir of Akbar Ali, that the patta executed in her favour in the year 1330F was merely a conversion of grain, rent into cash rent and did not confer on her any new rights or make her a tenant in her own right. Against this decree the defendants have appealed.

4. It has been urged by learned counsel for the appellants that assuming that Muliman inherited the tenancy in dispute from Akbar Ali, she became a tenant in her own right when she obtained a patta of the holding from the landlord. The point of time when Muliman succeeded to the tenancy is not known because we do not know when Akbar Ali died. But this much is known that Muliman was in possession of the holding from before 1330F that is from before 1322-23. In 1921 the Oudh Rent Act which applied to the case was abolished and statutory tenancy was introduced for the first time.

Non-occupancy tenants became statutory tenants. If, however, Akbar Ali died after 1921 then Akbar Ali was a statutory tenant and Muliman entered into possession of the holding as an heir of a statutory tenant. If Akbar Ali was a mere non-

occupancy tenant, Muliman was also a non-occupancy tenant.

Therefore, Muliman entered into possession either as an heir of a Statutory tenant or as an heir of a non-occupancy tenant. In either event she was liable to be ejected from the holding and, therefore, when the zemindar executed a patta in her favour in the year 1922 for ten years she became a tenant in her own right under the patta. It is wholly immaterial that the patta was given, by the zemindar after the rent in kind had been commuted into a rent in cash. The main point to be noticed is that she had no right to remain in possession of the holding as an heir when the patta was granted to her or at the most after five years of the death of Akbar Ali. The execution of the patta in her favour was entirely a new contract between the zemindar & Muliman and Muliman acquired title to hold the tenancy in her own right under the patta. She, therefore, became a hereditary tenant when the U. P. Tenancy Act came into force in 1939. Succession to her would be governed not by Section 36, U. P. Tenancy Act, but by Section 37 of the Act. Section 36 applies when a female tenant (other than a tenant mentioned in Section 34) held the property in her capacity as a widow or other female mentioned in the section. It does not apply to the case of a female holding a tenancy in her own right. Succession to a female tenant holding a tenancy in her own right is governed by Section 37. The expression in Section 36 "who either before or after the commencement of this Act has inherited an interest in the holding as a widow....."

refers to a female tenant who has inherited the holding as a widow etc. still continuing to hold possession of the holding in that capacity at the time of her death. In the present case, as I have stated, already though Muliman inherited the property as a widow she acquired the holding in her own right by entering into a fresh contract with the landlord. If she were a tenant who could not have been ejected, for instance, if she were an occupancy or ex-proprietary tenant, the position might have been different. The plaintiffs were, therefore, not entitled to inherit the holding. Their suit should have been dismissed.

5. I, therefore, allow this appeal, set aside the decree of the Court below and restore that of the Munsif with costs throughout.

6. Special leave to appeal to a Division Bench is refused.