

## **Lal Madho Singh And Ors. vs Abdul Qaiyum Khan on 20 March, 1950**

**Equivalent citations: AIR1950ALL505, AIR 1950 ALLAHABAD 505**

### **JUDGMENT**

Agarwala, J.

1. This is a defendants' appeal arising out of a suit for demolition of certain constructions made by the defendants-appellants in plots Nos. 180 and 181/1 in village Ainadih, district Allahabad.

2. The plaintiff-respondent is a zamindar of the village and the defendants-appellants are tenants as well as riyayas. The defendants-appellants have a house in the abadi of the village-on plot No. 180; and plot No. 181/1 is an agricultural plot under their occupancy tenancy. On the finding of the Courts below, which is not disputed before me, they extended their house so as to cover the land either of plot No. 180 or of plot No. 181/1 or both. It has not been decided by the Courts below whether the disputed constructions were in one of the plots or in both.

3. The defendant's main case was that they were entitled to build upon their occupancy plot No. 181/1 because the construction being an extension of their residential house amounted to an improvement within the meaning of Section 3 (8). U. P. Tenancy Act; and that they were entitled to make an extension in the abadi plot No. 180 because the extensions were made on what was called "sahan darwaza" land in front of and appurtenant to the house. Both the Courts below have overruled the defendants' objections and decreed the suit.

4. In this appeal it has been urged that so far as the extension in plot No. 181/1 is concerned, it is an improvement and that so far as the extension in plot No. 180 is concerned, the defendants-appellants were entitled to make it under Section 4, U. P. Village Abadi Act In [3] of 1918.

5. Under Section 65, U. P. Tenancy Act, an occupancy tenant in Agra may make "any improvement, except that he may not make an improvement mentioned in Sub-clause, (d) or Sub-clause (e) at Clause (ii) of Sub-section (8) of Section 3, unless there is a local custom entitling him to do so or he has obtained the written consent of the landholder."

The construction in dispute is a part of a residential house. The residential house falls under Clause (1) of Section 3 and not under any of the clauses in respect of which an occupancy tenant is not authorised to make constructions in the absence of custom or consent of the landlord.

6. An improvement under Clause (i), Sub-section (8) of Section 3 refers to a c"dwelling house erected on the holding by the tenant for his own occupation or a cattle-shed or a store house or any other construction for agricultural purposes erected or set up by him on his own holding."

7. The lower Court was of opinion that this clause deals with a construction which is exclusively on the holding and is not a part of another house which is mainly situated on another plot not forming part of the holding I do not think that the clause in question can be limited in this manner. The whole includes a part and if a tenant is entitled to build a complete house, he is certainly entitled to build a portion of a house, and it does not matter that that portion is attached to another house or is made a part of another house on an adjoining plot. There can be no difficulty in the case of relinquishment of a holding or ejectment from the holding in separating the portion of the house which is on the holding from the portion which is out side the holding. In my opinion, the extension of a dwelling house by an occupancy tenant on a portion of the balding is an improvement within the meaning of Section 3 (8) (i).

8. So far as the extension in plot No. 180 is concerned, according to the rule of law prevailing in these provinces, before the coming into force of the U. P. Village Abadi Act, Act in [3] of 1948, a tenant was not entitled to build on land which was sahan darwaza, that is land in front of his house, unless he can allow that by the original grant he was permitted to build not only upon the site on which the house stood but also on the land which was his sahan darwaza: vide Ratan Birhai v. Kishan Dei, 1933 A. L. J. 56 : (A.I.R. (20) 1933 ALL. 288) and Dasrath Teli v. Ram Das, 1937 A.L.J. 1191 : (A.I.R. (24) 1937 ALL. 798).

9. Section 4, U. P. Village Abadi Act, however, has altered the position. That section runs as follows :

"House owner's right to user--Notwithstanding any custom or usage to the contrary in any agricultural village, a house-owner may--

(a) convert his kachcha house into pacon, and

(b) make such construction in the sahan darwaza or laud appurtenant to such house as ma; be necessary for agricultural or domestic purposes."

This section, however, is not retrospective. It cannot, therefore, apply to the present case in which the constructions were made before the Act came into force and the suit itself was pending on the date on which the Act came into force.

10. The question, however, is that even if I allow the constructions on abadi plot No. 180 to be demolished, tae defendant-appellant can forthwith make those constructions again. The decree, therefore, will be rendered useless. It is a well-established principle of law that Courts do not indulge in a mere pastime and pass orders which can be rendered nugatory at the mere wish of a party against whom the order is passed. The, relief claimed in this suit is one of injunction and that is a discretionary relief to which the plaintiff is not entitled as of right in every case. This is, to my mind, a fit ease in which the mandatory relief asked for should not be granted.

11. The result, therefore, is that I allow this appeal, set aside the decrees of the Courts below and dismiss the plaintiff's suit.

12. In the circumstances of the case, I order that the defendants appellants do pay the costs of the litigation in all Courts to the plaintiff-respondent. In making this order regarding costs, I have taken into consideration the fact that the plaintiff would have been entitled to his costs at least qua the construction) on plot No. 180, and also in lieu of injunction to some damages. I have 'not awarded damages and I have, with the consent of the counsel for the parties, awarded full costs to the plaintiff-respondent.