

## **B. Gulzar Singh And Anr. vs Mt. Janki Kunwar on 20 September, 1950**

**Equivalent citations: AIR1952ALL308, AIR 1952 ALLAHABAD 308**

### **JUDGMENT**

Mushtaq Ahmad, J.

1. These are plaintiffs' appeals, each arising out of a particular appeal in the lower appellate Court and in the same suit by the same plaintiffs.
2. The suit was for a perpetual injunction restraining the defendant from interfering with the plaintiffs' possession over certain sir plots. There was also a prayer for possession in the alternative. The original sir holders were one Ranjit Singh and one Sarju Prasad. The plaintiffs are the successors in interest of the former and the defendant is the successor-in-interest of the latter. In 1889, Ranjit Singh, predecessor-in-title of the plaintiffs, filed a suit against the other co-sharer, Sarju Prasad, for possession over the plots held by the latter. That suit was compromised on 29-11-1890. Therein it was settled that each party would remain in possession of the plots in his exclusive occupation and that he would be entitled to have a formal partition of the patti, meaning mahal, according to their respective possessions. For all intents and purposes each party was recognised to be the exclusive owner of the sir plots and allowed to remain in possession of the same. On this point there is no dispute now between the parties.
3. In 1910, Ranjit Singh's widow sold the plots allotted to him together with his proprietary share in the village to the plaintiffs. The widow admittedly did not claim any ex-proprietary rights in those plots, but allowed the plaintiffs to obtain possession over them. This possession appears to have continued upto 1944, in which year the defendant filed a suit against the tenants of the plaintiffs for arrears of rent. This suit was decreed. I may incidentally mention that there is a finding in this case by the lower appellate Court that the plaintiffs are, in fact, still in possession.
4. Aggrieved by the situation created by the above decree, the plaintiffs filed the suit giving rise to the present appeals. The defence taken was that the plaintiffs were not sir holders of the plots in dispute which, as a result of the sale of 1910 referred to above, had passed on to the defendant, a co-sharer in the village, and that the suit was barred by time.
5. The trial Court decreed the suit for a perpetual injunction, holding that the plaintiffs were only joint sir holders with the defendant of the plots in dispute. Both the parties appealed and the lower appellate Court, dismissing the appeal of the plaintiffs and allowing that of the defendant, dismissed the entire suit.

6. The main argument addressed to me by the learned counsel for the plaintiffs-appellants was that whatever may be the effect of the Full Bench decision of this Court in *Ram Raj Singh v. Bajendra Singh*, 1943 ALL. L. J. 213, the plaintiffs, even on the finding of the lower appellate Court that they were in possession of the plots in dispute, were entitled to a relief for injunction. That decision is undoubtedly an authority for the proposition that where a joint sir holder has transferred his interest in the sir plot to another and the transferor has not claimed ex-proprietary tenancy, the sir transferred becomes the sir of the other co-sharers. In the present case, on the bare reading of the compromise dated 29-11-1890, referred to above, there was no question of any sir plots having been transferred by a 'joint sir holder.' There was, in my opinion, a complete partition of the sir plots in the mahal between Ranjit Singh and Sarju Prasad, the former co-sharers, and each party was accepted as the exclusive owner of the sir plots in his sole possession. The widow of one of these co-sharers transferred the plots in her husband's possession to the present plaintiffs. That transfer could not be regarded as one by a 'joint sir holder.' In this view, it would not be right to hold that the sir rights transferred by the widow of Ranjit Singh had, as a result of that transfer, passed on to Sarju Prasad. The question still remains whether they did pass on to the transferees the plaintiffs. I am equally certain that they did not. The right of a sir holder is a personal right, acquired in certain circumstances mentioned in the definition of sir in Section 6, U. P. Tenancy Act. It is not a right which can accrue except on a gift to a donee of the proprietary right or on exchange. The plaintiffs, therefore, surely did not acquire any sir rights in the plots transferred by Ranjit Singh's widow.

7. The more important question from a practical point of view still remains to be tackled, namely, whether the plaintiffs were entitled to retain possession of the plots transferred by the said widow. The plaintiffs had acquired not only the sir plots, but also the undivided zamindari share in the mahal under the sale deed of 1910. They thus acquired the rights of a co-sharer. As Such, it should not be difficult to hold that the plaintiffs entered into possession of the plots in dispute also after the sale in their favour in that capacity, though not as sir holders. Even in the Pull Bench case (1943 ALL. L. J. 213) referred to above, the learned Chief Justice in his separate judgment remarked:

"Now, it cannot be disputed that a person, who is the exclusive proprietor and sir-holder of a specific plot of land, has the right to transfer his whole proprietary right in that plot, and if he does not, after the transfer, claim exproprietary rights, no exproprietary rights will come into existence, and in such a case, the transferee will be entitled to actual possession of that plot."

The facts in that case and those in the present are almost mutually interchangeable except that there the transfer was by way of a mortgage and here it is by way of a sale. I cannot conceive that a different principle would apply where it is not a mortgage but a sale. The position seems to have been appreciated by the lower appellate Court itself, which found that it was for the defendant to establish how the plaintiffs were not entitled to retain possession of the plots by virtue of the sale deed of 1910. The Court did not find that the defendant had succeeded in his attempt to negative the right of the plaintiffs at least to retain possession of the plots in question on the authority of the observation I have just quoted from the Pull Bench decision of this Court. I must hold that the plaintiffs' right to retain possession of the plots in the circumstances of this case could not be denied.

8. This being the position, the question whether the plaintiffs were entitled to a decree for injunction becomes fairly simple. If they were entitled to retain possession of the plots and the defendant had actually realised rents from the plaintiffs' tenants, as if he had become the sir holder of both the sets of plots, the plaintiffs were surely entitled to such a decree. The trial Court did pass such a decree, but on the erroneous view that the plaintiffs and the defendant had become joint sir holders. I have already held that no sir rights could have been acquired by the plaintiffs, although, so far as the relief for injunction was concerned, they were certainly entitled to it.

9. Accordingly, I modify the decrees of both the Courts below and award the plaintiffs a decree for injunction restraining the defendant from interfering with their possession of the plots in dispute. This is a fit case in which the costs in all the Courts should be made easy, and I order accordingly.