

## Bhagwan Din vs Ram Das And Ors. on 21 April, 1952

**Equivalent citations: AIR1953ALL48, AIR 1953 ALLAHABAD 48**

### JUDGMENT

Malik, C.J.

1. This is a plaintiff's appeal. The plaintiff's suit for possession of seventeen tenancy plots, measuring 18 bighas and 5 biswas in Ashrafpur, district Faizabad, was dismissed by the lower appellate Court. These plots belonged to one Binda, who was the statutory tenant of these plots. He died in 1939. He had a son Abhilakh, who had predeceased him, leaving a widow, Srimati Rajwanta. This widow became the heir to the property under the Hindu Women's Rights to Property Act, XVIII of 1937, read with U. P. Hindu Women's Rights to Property (Extension to Agricultural Land) Act, XI of 1942. The fact that Rajwanta became the heir to Binda under the Acts mentioned above is not denied. On 8th November 1943, Rajwanta executed a deed of surrender in favour of Ram Bachan, her daughter's son. The suit was filed by Bhagwan Din and Ram Din, cousins of Binda, on the ground that they were the heirs of Binda and were entitled to possession of the property. The suit was filed on 15th November 1944. Rajwanta died on 14th December 1944, and after Rajwanta's death Ram Bachan was impleaded.

2. The only question for decision in the case is whether the plaintiffs are entitled to claim the property and the decision of that question will depend on the interpretation of Sections 36 and 37, U. P. Tenancy Act, XVII of 1939. If Section 37 is applicable, the plaintiffs have clearly no case. If, on the other hand, Section 36 is applicable, then as the next reversioners of Binda they became entitled to claim the property.

3. Section 35, U. P. Tenancy Act gives the list of persons who are entitled to inherit to a male tenant. Section 37 gives a list of persons who are entitled to succeed to a female tenant. Section 36, on the other hand, provides that when a widow or other female tenant mentioned in that section, who has inherited the tenancy as such heir dies, the tenancy will devolve on the heir of the last male tenant in accordance with the provisions of Section 35. Section 37 can only apply if Section 36 is not applicable. The question, therefore, is whether Section 36 is not applicable to this tenancy.

4. The relevant portion of Section 36 is as follows :

"When a female tenant ..... who either before or after the commencement of this Act has inherited an interest in a holding as a widow, as a mother, as a father's mother, or as daughter dies or abandons such holding, or surrenders such holding or a part of such holding or is the case of a tenant inheriting as a widow or as a daughter, marries, such holding or such part of such holding shall, notwithstanding anything in

Section 45, devolve in accordance with the order of succession laid down in Section 35 on the heir of the last male tenant, other than a tenant who inherited as a father's father under the provisions of that section."

In Section 35 there are six kinds of female heirs who inherit to a male tenant--widow, mother being a widow, step-mother being a widow, father's mother being a widow, widow of a male lineal descendant in the male line of descent and unmarried daughter. Section 36 specifically mentions widow, mother being a widow, step-mother being a widow, father's mother being a widow and unmarried daughter. A widow of a male lineal descendant in the male line of descent who is also an heir under Clause (h) of Section 35 is, however, not specifically mentioned in s, 36, and it is on that omission that learned counsel has based his argument that when a widow of a predeceased son succeeds to the property, the inheritance must be governed by Section 37 and not by Section 36.

5. We have carefully considered this argument and we are not satisfied that there is any substance in it. A mother, a step-mother, a grandmother and an unmarried daughter succeed due to blood relationship with the deceased male tenant and their names are, therefore, specifically mentioned in Section 36. Section 30 does not say that the widow in that section must be the widow of the last tenant. Rajwanta succeeded to the tenancy as the widow of Binda's son. It cannot, therefore, be urged that she did not succeed as a widow. Five out of six female heirs having been included in Section 36, there was no reason why, when a widow was included, the widow of a male lineal descendant should have been excluded, and she should have been given larger rights, so that after her death the property should go to her own heirs in preference to the heirs of the last male tenant. We think the word widow in Section 36 was meant to include any person who succeeded as a widow, that is, by reason of her having been married in the family, she had become an heir to the tenancy by reason of the death of her husband. No reason is suggested to us why, when Section 36 is applicable to five female heirs out of six mentioned in Section 35, the widow of a male lineal descendant should be treated differently and the succession in her case should be different from that in the case of other female heirs, who had inherited the tenancy by succession to a male tenant. These rules of succession are not confined to Hindus and the sections apply to all tenants, Hindus, Muslims and others. The idea, therefore, was that where a female tenant had succeeded to a male tenant in accordance with the provisions of Section 35, after her death the property should be treated as having belonged to the last male tenant and it should go to his other heirs, while, if the property belonged to her in her own right as a tenant, then the succession would be, as given in Section 37.

6. Learned counsel has further urged that Rajwanta did not inherit any interest in the holding. His contention is that under Section 48, Oudh Rent Act, Rajwanta had merely a right to remain in possession for five years and in case she remained in possession for a further period of three years, as required by Explanation to Section 3(18), she would acquire statutory tenancy rights and it could not be said that she had inherited from Binda the statutory tenancy, which she had herself acquired. We have pointed out in Section 12 (2), O. C. Act, *Ram Ratan Tewari v. Jagdat Tewari*, (Appeal no. 1 of 1950 (ALL.)) that Rajwanta could not have acquired statutory tenancy rights under Section 48 read with the Explanation to Section 3 (18) if she had not been heir of Binda. There is no doubt that because she was heir of Binda, she was entitled to acquire statutory tenancy rights by remaining in occupation for a period of five years under Section 48 and thereafter for a further period of three

years in accordance with the Explanation to Section 3 (18), Oudh Kent Act. She had, therefore, inherited an interest in the holding though she had to remain in possession for a further period of eight years to become a statutory tenant. She became a statutory tenant because she was a widow and the origin of her tenancy was inheritance from Binda. Section 36 was, therefore, clearly applicable and Rajwanta having surrendered the tenancy, the plaintiffs were entitled to maintain the suit and claim the property.

7. The result, therefore, is that this appeal is allowed, the decrees of the Courts below are set aside and the plaintiff's suit is decreed with costs in all the Courts.