

## Ram Ratan Tewari vs Jagdat Tewari on 21 April, 1952

**Equivalent citations: AIR1952ALL854, AIR 1952 ALLAHABAD 854**

### JUDGMENT

Malik, C.J.

1. The property in question consisted of certain tenancy plots which were in the possession of one Kesho Ram, who died in 1894. Neither in the judgment of the learned single Judge nor in the judgment of the lower appellate Court the year of death was mentioned. The lower appellate Court had said that Kesho Ram had died long before 1921, and the learned single Judge has said that he had died before 1921. The year of Kesho Ram's death is, however, of some importance. On 25-3-1944, learned counsel for the plaintiff made the following statement :

"Plaintiff's counsel further states that Kesho Ram, husband of Mt. Phulesra, was the tenant of the land in suit and on his death the tenancy devolved on his widow Mt. Phulesra, as life estate holder and Kesho Ram died some 50 years back. Phulesra did not enter into any new contract of tenancy."

So working it backwards death of Kesho Ram may be assumed to have taken place about 1894. It is admitted that Kesho Ram was an ordinary tenant, which, under the Oudh Rent Act, Act XXII [22] of 1886, entitled him to remain in possession of the holding for a period of seven years. Srimati Phulesra, widow of Kesho Ram, remained in possession of the plots till her death in July 1939. She had two daughters, Radha and Parbati; and Radha had two sons, Jagdat and Sant Bux, and two daughters. On 15-8-1939, Jagdat, one of the two sons of Radha, filed a suit for possession for self and for the benefit of defendant 2, Sant Bux, against Ram Ratan, defendant 1, who was alleged to be a trespasser. Ram Ratan denied Jagdat's right to file the suit on the ground that the daughters of Radha were preferential heirs to the sons.

2. The trial Court decreed the suit, but the lower appellate Court allowed the appeal and dismissed the suit on the ground that in the presence of the daughters of Badha, Jagdat, her son, had no right to maintain the suit. In second appeal a learned single Judge restored the decree of the trial Court, but granted leave under Section 12, Oudh Courts Act to file a further appeal. Defendant Ram Ratan thus filed this appeal which has now come up before us for decision.

3. Kesho Ram, as we have already pointed out, died in 1894, when the Oudh Rent Act, XXII [22] of 1886, was in force. It was amended by an Amending Act IV [4] of 1921, which came into force on 11-2-1922. The U.P. Tenancy Act XVII [17] of 1939, did not come into force till 1-1-1940, and has, therefore no application to the case as Phulesra died in July 1939 and the question for the decision is who became entitled to the tenancy on her death. We have, therefore, to confine our attention to the Oudh Rent Act of 1886 for the decision of the question of the rights acquired by Phulesra and to the

amended Act for the decision of the question as to who were the heirs of Phulesra at the time of her death in 1939.

4. At the time when Kesho Ram died in 1894, under the Oudh Rent Act, Section 48, his heirs were entitled to remain in possession for the unexpired period of seven years and had no other right in the tenancy. The tenancy was not heritable nor could it be kept alive for more than the unexpired period of seven years from the date of the death of the tenant. It may be useful to quote Section 48 unamended by Section 29, U.P. Act 4 of 1921. The unamended section was as follows:

"The heir of a tenant who dies during the currency of the tenancy of a holding shall be entitled to retain occupation of the holding at the rent payable by the deceased for the unexpired portion of the period for which the deceased tenant might have held without liability to enhancement or ejection, and to receive compensation under the provisions of this Act for improvements, if any, made on the holding by himself or his predecessor-in-interest, but shall not be entitled to a renewal of the tenancy".

There was no such thing as a statutory tenant in the Act of 1886 before its amendment in 1921. Even if we are, therefore, to assume that almost the whole of the period of seven years had remained unexpired at the time of Kesho Ram's death in 1894, his widow's right to remain in possession of the property ceased in 1901. Thereafter there was no question of acquiring any interest in the tenancy for or on behalf of Kesho Ram or his estate. So far as the tenancy law was concerned there was, at the time when the question arose, no such thing as a Hindu widow's estate. In a tenancy of this nature an ordinary tenant, whether male or female was entitled to remain in possession for seven years from the date when the tenancy began. If before the expiry of the seven years he died, for the unexpired portion his heir was entitled to remain in possession. After the expiry of seven years the tenancy ceased to exist and there was no question, therefore, of acquiring any rights in it. In the tenancy left by Kesho Ram there was no estate of inheritance which could survive beyond the unexpired period of seven years. Whatever rights the tenant thereafter acquired must be in his own right as a tenant of the landlord. If the landlord accepted rent from him and he became a tenant, he must be deemed to have become a tenant in his own right. In 1922, therefore, when the Amended Act came into force Phulesra had been in possession for more than twenty years as a tenant on behalf of the landlord. It could not be said that during this period of twenty years she had remained in possession merely as a widow of Kesho Ram and any rights that she had acquired must be deemed to have been acquired by her merely as a Hindu widow and not in her own right.

5. There is another way of looking at the case. In the year 1939 when Phulesra died, Section 48 as amended in 1921 applied to the tenancy. Amended Section 48 was as follows:

"When a statutory tenant dies, his heirs shall be entitled to retain occupation of the holding at the rent payable by the deceased for a period of five years from the date of the tenant's death, and to receive compensation under the provisions of this Act for improvements, if any, made on the holding by his predecessor-in-interest, but shall not be entitled to a renewal of the tenancy."

The question, therefore, arises, who was the statutory tenant when Phulesra died in 1939? The answer can only be that the statutory tenant was Phulesra. It could not be said that though Kesho Ram had died in 1894 he or his estate was the statutory tenant nor could it be said that he was the last male owner of the statutory tenancy, which did not exist in 1894 and was not created till the Amending Act of 1921 was passed. We fail to see how under these circumstances Kesho Ram's heirs could claim any rights under Section 48, Oudh Rent Act. Under the Oudh Rent Act there was no difference between a female tenant or a male tenant and the statutory tenant Phulesra having died in 1939, it is her heirs who got the right to retain occupation of the holding for a period of five years. It has not been disputed that the plaintiff, Jagdat, is not the heir of Phulesra. In the circumstances the suit was rightly dismissed by the lower appellate Court.

6. There is no decision of the Oudh Chief Court or even the Judicial Commissioner's Court on the point. Learned counsel has, however, referred us to a decision of the Board of Revenue, reported in *Chandra Bhan Dat Ram v. Mahabir Prasad*, (1923) 7 R.D. 396, where the Board took the view that a female acquiring statutory tenancy rights must be deemed to be a tenant in her own right even though the land had been cultivated previously by her husband.

7. Learned counsel for the respondent has relied on an unreported decision of this Court in *Sital v. Suraj Din*, Second Appeal No. 421 of 1943, decided on 20-12-1948. In our view the facts of that case were entirely different. The husband Danna had, no doubt, died in 1916, before the Amending Act of 1921 had come into force. The widow, Sheorajia was entitled to remain in possession of the property for the unexpired period of seven years. It is not known when the unexpired period expired but she was in possession when the Amending Act 4 of 1921 was passed and she became entitled to remain in possession for a period of five years after her husband's death, and she remained in occupation for a further period of three years and became a statutory tenant under Explanation to Section 3(18). She thus became a statutory tenant. She died in October, 1940 after the U.P. Tenancy Act, (Act 17 of 1939) had come into the question of succession to the tenancy was therefore governed by the U.P. Tenancy Act. The question for decision in that case was whether Section 36 or Section 37, U.P. Tenancy Act applied. The learned Single Judge held that Section 36 applied.

We have today taken the same view in Second Appeal No. 50 of 1947, *Mst. Jaini v. Nankoo*. It is admitted that the widow having died in July, 1939, the U.P. Tenancy Act which came into force on 1st January 1940 had no application to the succession, and, therefore, Sections 36 and 37, U.P. Tenancy Act have no bearing to this case.

8. The result, therefore, is that this appeal is allowed, the judgment of the learned single Judge is set aside and the decree of the lower appellate Court is restored with costs in all the Courts.

9. The stay order is discharged.