

## Bikram Singh vs Sumnehra on 4 January, 1954

**Equivalent citations: AIR1954ALL434, AIR 1954 ALLAHABAD 434**

### JUDGMENT

1. These three second appeals arise out of three suits for ejectment filed under Section 175 of the U. P. Tenancy Act, 1939. The plaintiff in all the three actions was Bikram Singh while the defendants were different. The plaintiff claimed that he was the 'sirdar' of the plots in suit, that the defendants were mere non-occupancy tenants, that he no longer wished them to continue as his non-occupancy tenants and that therefore he asked them to quit and that on their failure to do so he had filed the suits for their ejectment. The suits were filed in the year 1944. The defence was that the defendants were hereditary tenants and the plaintiff was not the landlord and had therefore no right to eject them. The trial Court decreed the suits on the 8th of February, 1946, The defendants filed appeals and the lower appellate Court allowed the appeals on the 21st of February, 1947 and the plaintiff thereafter came to this Court in second appeal.

2. It is the common case of the parties that Harbans Singh was the 'sirdar' of these plots now in dispute. He died in the year 1906 leaving two daughters, Risal Kuer and Bhagwani. Bikram Singh plaintiff is the son of Bhagwani. On the 14th of October, 1915 Risal Kuer and Bhagwani partitioned the properties and each became the owner in possession of separate plots of land. The plots now in dispute fell to the share of Risal Kuer. On the 1st of November, 1939, Risal Kuer executed a deed of relinquishment in favour of Bikram Singh of the portion of the property that had fallen to her share and Bhagwani attested this document in token of her consent. Bikram Singh then claimed that he was the 'sir'-holder and was entitled to eject the non-occupancy tenants.

The trial Court decided in plaintiff's favour that he was the 'sir'-holder and that the defendants were his non-occupancy tenants. The lower court affirmed the finding that the defendants were non-occupancy tenants of the 'sir' land but it was of the opinion that the deed of relinquishment executed by Risal Kuer could operate only for her life-time and after her death the property vested in Bhagwani by right of survivorship and Bikram Singh therefore could not claim to be the 'sir'-holder. On the 2nd of May, 1950 the case was heard by one of us when the following issues were remitted to the lower Court:

"(a) Whether any partition was effected between Bhagwani and Risal Kuer by which each gave her right of enjoyment over the properties allotted to the other during their respective lifetime?

(b) Whether the deed of relinquishment was executed with the consent of Bhagwani Kuer? and

(c) Whether the defendant was an occupancy tenant of the plots or a hereditary tenant?"

All the three issues have been decided in favour of the plaintiff, i.e. it has been found that a partition was effected, that Bhagwani and Risal Kuer were to enjoy the property separately and that the deed of relinquishment was executed with the consent of Bhagwani and that the defendant was a non-occupancy tenant. These findings have not been challenged by the learned counsel for the respondent and on these findings the plaintiff appellant was entitled to have the appeal allowed and the 'decree of the lower appellate Court set aside. It is urged however that the decision should now be otherwise as the defendants have acquired certain rights under the U. P. Zamindari Abolition and Land Reforms Act, 1951 (U. P. Act No. 1 of 1951). Reliance is placed on Section 20, Clause (a) (i), relevant portion of which is as follows:

"Every person, who, on the date immediately preceding the date of vesting, was or has been deemed to be, in accordance with the provisions of this Act a tenant of 'sir' shall be called 'adhivasi' of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof."

It is alleged that in accordance with the provisions of the clause quoted above the defendants became 'adhivasis' and were entitled to retain possession of the land in suit.

3. It has also been urged by learned counsel that he can rely on the provisions of first part of Clause (b) (i) of Section 20 as his name was recorded in the 'khasra' or 'khatauni' of 1356 F. prepared under Sections 28 and 32 of the U. P. Land Reforms Act, III of 1901. Learned counsel for the appellant has however pointed out that there is nothing on the record to show that the names of the defendants were entered as occupants of the land in suit in the 'khasra' or 'khatauni' of 1356 P. If we had considered that this fact would make any change in the result we might have considered the question of remitting an issue or directing the parties to produce before us certified copies of the 'khasra' or 'khatauni'. But in our view the question whether the defendants come under Clause (a) or first part of Clause (b) will make no difference and it is therefore not necessary to require any further evidence to be produced. The defendants claim that they became 'adhivasis' under Section 20 of the Act and were therefore entitled under that Section to retain possession of the land.

4. The question whether the defendants can rely on this Section and if they can whether the result would be any different would depend upon the question whether the Section was intended to have retrospective effect and if not whether it would apply to pending proceedings. Dealing with the first question whether the Section was intended to be retrospective great reliance has been placed by learned counsel for the respondent on explanation 1 to Section 20. Section 20 can broadly be said to apply to three classes of cases; firstly, where a person was a tenant on the 30th of June, 1952, (the 1st of July, 1952 being the date of vesting); secondly, if he was not a tenant on the 30th of June, 1952 but was in occupation of the land and had been recorded in the 'khasra' or 'khatauni' of 1356 F. as an occupant of the land then also he could claim to be an 'adhivasi'; and thirdly, if he had been ejected after June 30, 1948 but had still the right under the U. p. Tenancy (Amendment) Act, X of 1947, Section 27 (1) (c), to apply for reinstatement, he could claim to be an 'adhivasi', Relevant portion of Section 27 (1) (c) is as follows:

"(1) If, on or after the first day of January, 1940, any person was ejected from his holding or any part thereof--

(c) under Section 180 of the said Act notwithstanding his having been recorded as an occupant after the first day of January, 1938 in a record revised under Chapter IV of the United Provinces Land Revenue Act, 1901, or corrected by an officer specially appointed by Government for the correction of annual registers in any tract, he may apply, within six months from the date of the commencement of this Act, to the Court, which passed the decree for his ejectment for re-instatement in such holding or part thereof, as the case may be."

The explanation has made this change in the Section that a person ejected after the 30th of June, 1948 can claim to be an 'adhivasi' if he has the right to claim reinstatement in accordance with the provisions of Clause 1 (c) of Section 27 of the U. P. Tenancy (Amendment) Act No. X of 1947. The explanation therefore only alters the date of ejectment from the 1st of January, 1940 as provided for in Act 10 of 1947 to the 30th of June 1948. The explanation does not apply to those who claim to be 'adhivasis' under Clauses (a) and (b) of Section 20 of the U. P. Zamindari Abolition and Land Reforms Act (Act No. 1 of 1951).

5. The rights of the 'adhivasis' are given in Section 231. The Section provides that an 'adhivasi' except as provided in Sections 233, 234 and 237 will have the same rights and liabilities which he possessed on the date immediately preceding the date of vesting, i.e. the 30th of June, 1952. Section 231 has been made subject to Sections 233, 234 and 237. We are not concerned in this case with Sections 233 and 237. Section 234 provides that:

"Without prejudice to the provisions of Section 237, an 'adhivasi' shall be liable to ejectment from the land held by him--

(a) on the ground that he is in arrears of rent,

(b) on the ground that he has made any transfer of his holding or part thereof, or

(c) for using the land for any purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming,....."

6. The Section quoted above is as amended by the U. P. Act No. XVI of 1953. Before the amendment the Section read as follows:

"Without prejudice to the provisions of Section 237, an 'adhivasi' shall not be ejected from the land held by him except

(a) on the ground that he is in arrears of rent,

(b) on the ground that he has made any transfer of his holding or part thereof, or

(c) for using the land for any purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming....."

7. The Section as it originally stood before the amendment made it clear that an 'adhivasi' could be ejected only on the grounds (a), (b) and (c) mentioned in the Section. As a result of the amendment it is urged that what the legislature intended by the amendment was to make it clear that an 'adhivasi' shall be liable to ejection on the grounds (a), (b) and (c) mentioned in the Section, but besides those grounds there may be other grounds on which a Court may in a proper case eject an 'adhivasi'. It is difficult to understand the reason for the change and we must assume that the amendment was made with some purpose. It may not, however, be necessary to go into that question as in our opinion Section 20 was not intended to be retrospective. There is nothing in the Act to indicate that the provision was intended to be retrospective and the position was made abundantly clear by certain rules and orders that were subsequently passed. On the 26th of August, 1952 an Order under Section 342 of the U. P. Zamindari Abolition and Land Reforms Act (Act No. 1 of 1951) was passed which is known as the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952. Relevant portion of paragraph 2 of this Order is as follows:

"Except as expressly provided in the U. P. Zamindari Abolition and Land Reforms Act, 1950, or under the U. P. Zamindari Abolition and Land Reforms Rules, 1952, every suit, appeal or legal proceedings in respect of any rights, or privilege, obligation or liability acquired, accrued or incurred under or in pursuance of the U. P. Land Revenue Act, 1901, or the U. P. Tenancy Act, 1939, shall--

(a) where pending on the 30th day of June, 1952, in any Revenue or Civil Court, be continued in such Court;..... and every such suit, appeal or legal proceedings shall be heard, inquired into and decided under and in accordance with the provisions of the U. P. Land Revenue Act, 1901, and the U. P. Tenancy Act, 1939."

There is nothing in the U. P. Zamindari Abolition and Land Reforms Act (Act No. 1 of 1951) to indicate that the Act was intended to apply and affect the decision in pending suits, and the U. P. Zamindari Abolition and Land Reforms Rules, 1952 also make it clear that suits and proceedings stayed under Clause 4 of the Rules are to be disposed of in accordance with the provisions of the U. P. Land Revenue Act, 1901 and the U. P. Tenancy Act, 1939. Relevant portion of Clause 4 of the Rules is as follows:

"All suits and proceedings whether of the first instance, appeal or revision of the nature as herein below specified, in respect of the area for which a notification under Section 4 has been issued, pending in any Court of hearing on the date of vesting, shall be stayed."

Suits, including appeals, references and revisions, under Sections 175 and 179 of the U. P. Tenancy Act, 1939 were specified to which this rule applied and which were to remain stayed. Sub-rule (3) of Rule 5 of the said Rules is as follows:

"Except as provided in Sub-rule (2) every suit or proceeding stayed under Clause (iv) of Rule 4 shall, whether pending in appeal, reference or revision, be continued and decided in accordance with the provisions of the U. P. Tenancy Act, 1939 & the U. P. Land Revenue Act, 1901 as may be applicable."

The Rules also therefore provide that pending suits, including appeals, are to be decided in accordance with the provisions of the U. P. Tenancy Act, 1839. In view of, therefore, the U. P. Zamindari Abolition and Land Reforms Rules, 1952, and the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952, it must be held that Section 20 of the U. P. Zamindari Abolition and Land Reforms -Act (Act No. 1 of 1951) will not affect the rights of the parties to this action.

8. It has been urged by learned counsel for the appellant that the defendant cannot claim to be an 'adhivasi' under Section 20, Clause (a)

(i), as he had ceased to be a tenant at the end of the agricultural year after the suit for ejectment was filed. In other words, the contract of tenancy which was the result of a mutual agreement, being in this case terminable at will, the tenant could not claim after a suit for ejectment had been filed and decree for ejectment obtained from the trial Court that he was still a tenant on the 30th of June, 1952. This submission in our view appears to have considerable force. Learned counsel for the defendants-respondents has, therefore, relied on Section 20 (b) (i) of the U. P. Zamindari Abolition and Land Reforms Act (Act No. 1 of 1951) and has prayed that the Court should give the defendants an opportunity to prove that their names were entered as occupants in the 'khasra' or 'khatauni' of 1356 P. In the view that we have, however, taken that Section 20 is not retrospective and that the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952, makes it clear that the U. P. Tenancy Act, 1939 is to be applied to pending proceedings, these appeals must be allowed, the decree of the lower appellate Court set aside and the decree of the trial Court restored with costs in all the Courts.