

# **Sampat Thakurai And Ors. vs Gomti Thakurai And Ors. on 15 September, 1950**

**Equivalent citations: AIR1952ALL124, AIR 1952 ALLAHABAD 124**

**Author: V. Bhargava**

**Bench: V. Bhargava**

## **JUDGMENT**

V. Bhargava, J.

1. This is a defendants' appeal arising out of a suit for recovery of possession over four plots Nos. 352, 353, 354 and 359. The plaintiffs-respondents claimed possession as transferees of this land from one Kodai by means of a sale deed, dated 7-12-1944 and alleged that, after this sale-deed, the appellants had dispossessed them on 22-12-1944, It was also alleged that they had cut some trees and removed some materials from this land.

2. The facts found by the lower appellate Court are that the land covered by these four plots was once upon a time the joint property of one Dashrath and the predecessors in-interest of the appellants. The partition took place in the year 1905 when three pattis were formed. Dashrath was given his zamindari in Patti Tulshi. He had no share in the other two pattis which were named as Patti Niwaz and Batti Baran, These four plots fell in these two latter pattis in which Dashrath had no right riots Nos. 352, 353 and 354 were allotted to Patti Baran while plot No. 359 to Patti Niwaz. It may also be mentioned that Plot no. 355, on which the residential house of Dashrath stood, was also allotted to Patti Niwaz. In spite of this partition, Dashrath continued in possession of all these plots. The finding of the lower appellate Court is that this possession of Dashrath on Plot No. 352 was by using it as a Ghari, on Plot No. 359 as Bedha appurtenant to his house situated on Plot no. 355 and on Plots Nos. 353 and 354 as his sahan appurtenant to his house on plot no. 355 and to his Ghari on Plot No. 352. After Dashrath, the property came to his son, Kodai, and it was Kodai who transferred his house on Plot no. 355 as well as all his rights in these plots in suit to the plaintiffs-respondents. Under these circumstances, the lower appellate Court held that the plaintiffs-respondents were entitled to remain in possession of this land as transferees of Kodai and were, therefore, entitled to a decree for possession against the appellants who had recently dispossessed them.

3. In this appeal, these findings of fact, which have been given by the lower appellate Court, have to be accepted as final. The main contention of the learned counsel for the appellants is that the possession of Dashrath and Kodai, after the partition of 1905, was only in the capacity of a tenant under Section 118, Land Revenue Act and, therefore, they had no transferable right in this land

which the plaintiffs-respondents could acquire by a sale. It was, therefore, contended that the plaintiffs-respondents were not entitled to continue in possession of this land and could not, therefore, seek a decree for possession against the defendants-appellants. This contention, in my opinion, has no force at all. In this case, there was no clear evidence that Dashrath and Kodai had continued in possession after 1905 on the land in suit under Section 118, Land Revenue Act; but it appears from the judgments of both the lower Courts that in those Courts both parties proceeded on the basis that Dashrath and Kodai had retained possession over these plots under Section 118, Land Revenue Act. There is no doubt that there was no evidence either that Dashrath or Kodai had been paying the ground rent as they were liable to do under Section 118, Land Revenue Act, if their possession over this land was under that section; this fact is immaterial. It is unnecessary in this appeal to decide whether the plaintiffs-respondents are still liable to be sued for assessment of rent and payment of ground rent at this time. All that is to be seen is whether, if Dashrath and Kodai continued in possession under Section 118, Land Revenue Act, they possessed a title which they could transfer by a deed of sale in favour of the plaintiff-respondents. It is true that Section 118, Land Revenue Act, creates some sort of tenancy, but it cannot be said that this tenancy would be of such a nature as would be governed by the provisions of the U. P. Tenancy Act. Section 118, Land Revenue Act itself says that the person allowed to retain possession of the building existing on the land of another is required to pay a reasonable ground rent in respect of that land; where the liability is only to pay ground rent, it must be presumed that the right acquired is that of constructing or maintaining a building or buildings on that land. Such a right is obviously a transferable right. It is true that the land was situated in a village abadi but nothing at all can be found in any law to show that the rights of a person entitled to maintain a building on the land of another on payment of ground rent are different in village abadis from those in cities and towns. Such a person does not occupy the land as a riyaya and the limitations of the power of the riyaya, to transfer the right to enjoy the site cannot be applied to the case of a person who retains possession over the land under Section 118, Land Revenue Act. In fact, the rights in such a case may be compared with the rights of a person holding a lease for building purposes and such rights have always been held to be transferable. In the alternative, it may be held that the person retaining possession has possessory title which again would be transferable. In this case, therefore, on the findings of fact given by the lower appellate Court, it must be held that the suit of the plaintiffs-respondents had been rightly decreed.

4. As a result, the appeal fails and is dismissed with costs.