

## Ram Dass Murari vs Binda Din on 3 November, 1950

**Equivalent citations: AIR1952ALL274, AIR 1952 ALLAHABAD 274**

### JUDGMENT

Kidwai, J.

1. Binda Din instituted the suit out of which this appeal arises against Bam Dass Murari appellant alleging that he was the tenant of a plot of land situated in village Jethauna in the district of Sultanpur & that the deft. had during the pltf's. absence on war service raised a 'saria' on the land & prevented the plff. from cultivating it. It was further alleged that the land was used by the deft, for sitting & placing his khaliyan upon it. It was, therefore, prayed that a decree for possession be passed in favour of the plff. by removal of all things existing upon the land.

2. The deft, pleaded that he had built nothing upon the land of the plff., & alternatively that, if the 'saria' was found to exist upon the plff's. land, it had been in existence for such a considerable length of time that the deft, had acquired the rights of a riyaya by adverse possession. It was further denied that the plff. was entitled to any damage. No plea as to jurisdiction was taken.

3. The trial Ct. held, in accordance with the decision of the Revenue Ct., that the plff. was not the hereditary tenant of the land in suit: that the plff. had been dispossessed from a portion of the plot in suit: & that the deft, had not perfected his title by adverse possession. In view of the finding as to the plff's. title the suit was dismissed.

4. The plff. went up in appeal. The learned Addl. Civil Judge held that the plff. was proved to be a tenant of the land in suit. He upheld the findings of fact arrived at by the trial Court in respect of the plea of adverse possession & dispossession by the deft. He accordingly decreed the suit & ordered the deft. to remove, within one month from the date of his decree, the constructions on the land shown by cross lines in the Commr's map. In default he ordered that the plff. would be entitled to get the constructions removed by executing the decree.

5. The deft, has come up in appeal & his learned Counsel has argued that the Civil Ct. had no jurisdiction to entertain the suit by reason of the amendment made by Act X (10) of 1947. The first matter to determine, therefore, is whether the amendments made by Act X (10) of 1947 can be applied to the present case. That Act came into force in June, 1947, & the suit was not decided till December 1947. Thus at the time of the enforcement of Act X (10) of 1947 the suit was still pending in the trial Ct. Every amendment in the law of procedure must have immediate effect given to it. As soon, therefore, as the amendment took place the Civil Ct. would, if the matter came within the new provisions added by Act X (10) of 1947, be deprived of its jurisdiction to entertain the suit, & it would be compelled to return the plaint for presentation to the proper Ct. vide 'Naqi Ahmad v. Sheo

Shankar', AIR (20) 1933 Oudh. 274. Thus it is now to be determined whether the reliefs sought in the suit were such as could be granted by the Revenue Ct. & therefore the jurisdiction of the Civil Ct. was barred.

6. As I have already stated the relief was for possession by removal of structure a khaliyan & a baithka. It has been laid down in 'Husaini v. Ghazi', 1943 O W N 84: that there is no provision in the Tenancy Act whereby a Revenue Ct. can grant a relief for demolition of a building. In the present case also one of the reliefs sought was a relief for the demolition of an existing structure.

7. It was contended by the learned Counsel on behalf of the appellant that the structure was of a temporary nature being only a thatched shed. It cannot be laid down that such structures are merely temporary structures. The conditions in the villages of India are such that such structures form the permanent abode of a large number of the people of the villages & from their point of view they are as permanent as a palace built at Lucknow. The removal of a structure of this kind is a real relief & not merely an ancillary relief hacked to the relief for possession. That being so, in the present case not only was possession claimed but also demolition of the structure. The latter relief could not be granted by the Revenue Court. Explanation II to Section 242 only says that:

"if the cause of action is, one in respect of which relief might be granted by the Revenue Ct. under Section 180, it is immaterial that the relief which may be asked for from the Civil Court is greater than or additional to that which the Revenue Ct. could have granted."

In the present case the cause of action was dispossession by the construction of a 'saria.' As I have already pointed out the relief for removal of the 'saria' could not be granted by the Revenue Court. Explanation II to Section 242 would, therefore, not exclude the jurisdiction of the Civil Court. In this case, therefore, the relief arising out of the same cause of action was such that one part of it could be granted by the Civil Court and another part by the Revenue Court. In these circumstances it is the Civil Court alone that will have the jurisdiction to entertain the suit. It cannot, therefore, be held that the trial Court was not competent to dispose of the suit.

8. This appeal fails & is dismissed with costs. The stay order dated 5-4-1949 is vacated.