Ramesh Bejoy Sharma And Ors vs Pashupati Rai And Ors on 17 July, 1979

Equivalent citations: 1979 AIR 1769, 1980 SCR (1) 6, AIR 1979 SUPREME COURT 1769, 1979 (4) SCC 27

Author: D.A. Desai

Bench: D.A. Desai, Ranjit Singh Sarkaria

PETITIONER:
RAMESH BEJOY SHARMA AND ORS.

Vs.

RESPONDENT:
PASHUPATI RAI AND ORS.

DATE OF JUDGMENT17/07/1979

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
SARKARIA, RANJIT SINGH

CITATION:
1979 AIR 1769 1980 SCR (1) 6
1979 SCC (4) 27
CITATOR INFO :
RF 1991 SC 663 (11)

ACT:
Bihar Land Reforms Act, 1950 -S. 6(1) -Scope of-Khas possession-Meaning of-Possession and khas possession-Distinction.
Respondents tenants at will in possession of land-Landlord-Intermediary, if could be said to be in khas possession of the land and entitled to evict the tenant-at-will without notice-Rights of tenant-at-will and landlord-Discussed.
Contention available to one of the parties not pressed before the High Court-If could be agitated before Supreme Court.

HEADNOTE:

In a suit filed against the respondents (defendants), for recovery of possession of the suit lands, the appellants (plaintiffs) alleged that the suit lands were the proprietor's private lands and were in their actual cultivating possession from time immemorial. The trial court dismissed the suit. Eventually, the High Court held that the defendants or their ancestors had not acquired any ryoti interest with right of occupancy; nor were they tenure-holders but were mere tenants-at-will; and that the suit was not maintainable because even a tenant-at-will could not be ejected without being given notice to quit. Thereupon the appellants gave notice to the defendants. In the meantime, by virtue of a notification issued under s. 3 of the Bihar Land Reforms Act 1950, the estate had vested in the State by reason of which the plaintiff was not entitled to evict the defendants.

On the question whether the plaintiff had a right to file a suit for possession after the vesting of the estate in the State, the trial court held that since the plaintiff had a right to take possession, the land could be deemed to be in his khas possession and, therefore, he would be entitled to evict the defendants notwithstanding the vesting of the estate in the State.

In appeal the High Court dismissed the plaintiff's suit on the ground that the right to take possession did not constitute khas possession within the meaning of s. 6(1)(b) of the Act.

In appeal to this Court it was contended on behalf of the appellant that khas possession within the meaning of s. 6 comprehends the right to take possession and so the appellant was entitled to evict the respondents.

Dismissing the appeal,

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HELD: (a) A combined reading of the definition of khas possession under s. 2(k) and ss. 3, 4 and 6 of the Act shows that the land in possession of a tenant-at-will cannot be said to be in khas possession of the intermediary for the purpose of s. 6. [19D]

(b) A tenant-at-will is not holding possession on behalf of the landlord but he has a vestige of title to it and holds on his own behalf and can set up his possession against the landlord till the formality prescribed by law is undertaken

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by the landlord and he is evicted by due process of law. If a notice of a certain duration is necessary expiring with a certain event such as the end of the agricultural year, till the end of the agricultural year the tenant, notwithstanding the fact that he is a tenant-at-will and under a notice to quit will be able to hold on to his possession and keep the landlord at bay. [17H]

In the instant case, in the suit between the same parties to the present litigations, the High Court held that

the defendants were tenants-at-will of agricultural land, that they were holding from year to year and that they could be evicted not only after termination of their tenancy by a notice to quit but such notice must expire with the agricultural year. The notice to be issued to the tenant-at-will has to be a notice terminating the tenancy which must expire with the end of the agricultural year. In Bihar the agricultural year expires in September. Therefore, once it is concluded inter-parties that even a tenant-at-will of an agricultural land is entitled to notice in consonance with justice and reason the tenant-at-will cannot be thrown out at any period during the year but the notice must expire with the end of the agricultural year.

Sudhir Kumar Majumdar & Ors. v. Dhirendra Nath Biswas & Anr., A.I.R. 1957 Cal. 625, not approved.

(c) A tenanat-at-will is someone other than the landlord. When he cultivates land used for agriculture, the agricultural operations cannot be said to be cultivation of the landlord himself. When a tenant-at-will carries on agricultural operations, he does them on his own and merely pays rent to the landlord. The landlord does not pay the tenant-at-will for the agricultural operations nor for the stock employed by the tenant-at-will. Keeping in view the definition of 'khas possession', cultivation of land by the tenant-at-will could not be said to be cultivation by the landlord, by himself or by his servants or by hired labourers. In such a situation the landlord cannot be said to be in 'khas possession' of the land in possession of the tenant-at-will. [18A-G]

(d) The term 'possession' used in s. 6 is qualified by the adjective 'khas' which means actual possession and is used in contra-distinction to the word 'constructive' possession. The term 'khas' possession, is used in a statute for ushering agrarian reforms and, therefore, the purpose and object behind the legislation must inform the interpretative process. The interpretation must tilt in favour of the actual cultivator, the tiller of the soil. [20 B-C]

2. When a notification under s. 3 was issued the respondents tenant-at-will were under a notice to quit which was to expire on September 24, 1953. Therefore, till September 24, 1953 the respondents tenants-at-will were in actual and physical possession of the land and till that date could hold against the intermediary landlord. It may be that when the notice to quit dated January 5, 1953 was served the intermediary landlord might have the right to take possession but till September 24, 1953 when notice would expire, the respondents were in actual possession and till then they could thwart any attempt of intermediary landlord to take actual possession. Therefore, on the date of the vesting i.e. April 12, 1953 the intermediary was not in 'khas possession' within the meaning of s. 6(1) and when on that day his estate vested in the State thereafter he was

not entitled to recover possession. After the vesting of the estate in the State, which event had occurred prior to the institution of the suit, he could not maintain an action for eviction as he had no more subsisting interest in the estate, his interest having vested in the State.
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Surajnath Ahir & Ors. v. Prithinath Singh & Ors. [1963] 3 SCR 290; Ram Ran Bijai Singh & Ors. v. Behari Singh alias Bagandha Singh [1964] 3 SCR 363; Gurucharan Singh v. Kamla Singh & Ors. [1976] 1 SCR 739 at 752-753; and Sonawati & Ors. v. Sri Ram & Anr. [1968] 1 SCR 617; referred to.

3. The contention of the appellant that if his application under Order 41 rule 27 C.P.C. to lead additional evidence were allowed it would establish that the land was already settled with the intermediary by the State and that there fore it was no more open to the respondents to contend that the intermediary was not entitled to the settlement of the land in his favour has no force. The rejection of the application is justified because if the evidence was allowed to be admitted on record at this stage it might put the respondents at a disadvantage. If the plaintiff (appellant) had obtained some settlement of land on the basis of a decree of the trial Court or the first appellate Court which became interlocutory in view of the appeal preferred to the High Court and then to this Court, it is not open to the plaintiff to take any advantage of such settlement. [22C-F]

4. If a contention which was available to a party had been abandoned in the High Court, it cannot be reagitated before this Court.

Jayarama Reddy & Anr. v. Revenue Divisional Officer & Land Acquisition Officer, Kurnool [1979] 3 SCR 599 referred to.

5. If a court fixes time to do a certain thing, the Court always retains the power to extend the time. [23E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 368 of 1969.

Appeal by Special Leave from the Judgment and Order dated 10-7-1968 of the Patna High Court in Appeal from Appellate Decree No. 343 of 1964.

Sarjoo Prasad, D. N. Mukherjee and S. N. Misra for the Appellant.

L. N. Sinha and D. Goburdhan for the Respondent. The Judgment of the Court was delivered by DESAI, J.-The chequered history of the litigation culminating in this appeal by special leave by the original plaintiff spreads over a period of 70 years with no end in sight. To ascertain and dispose of the point raised in this appeal willy nilly the history of the litigation, as briefly as one can humanly try, will have to be set out.

One Tikait Fateh Narain Singh was the holder of an estate comprising Taluka Chakai within the revenue limits of which the lands involved in this litigation are situated. On the death of Tikait Fateh Narain Singh the estate devolved on his widow Mussamat Durga Kumari, she having widow's interest as per the prevalent Hindu law at the relevant time. Mst. Durga Kumari sold the entire estate includ-

ing Taluka Chakai to Maharaja of Gidhaur. After her death one Tikait Chandi Prasad claiming to be the next reversioner of Tikait Fateh Narain Singh brought an action on 15th May, 1907 being Title Suit No. 86/1908 against the Maharaja of Gidhaur for setting aside the alienation on the ground that the alienation was made by a widow having life estate and being without legal necessity, it was not binding on the reversioner. This litigation culminated in a decree in favour of Tikait Chandi Prasad by the Privy Council on 2nd November, 1915. However, Tikait Chandi Prasad had succeeded in obtaining possession of Taluka Chakai somewhere in 1911 before the Privy Council finally ruled in his favour.

Soon after commencing the suit hereinbefore mentioned, Tikait Chandi Prasad felt stringency of funds necessary for fighting the litigation and he mortgaged the proprietary interest in the estate which he was claiming as reversioner, with one Mr. Chrestian for Rs. 30,000/- Even after the decision of the Privy Council in his favour, Tikait Chandi Prasad failed to discharge the mortgage with the result that Mr. Chrestian brought Title Suit No. 150/21 to recover the mortgage dues. This suit ended in a final decree on 17th November, 1923. Mr. Chrestian took out execution of the final decree in Execution Petition No. 207/25 and at the Court auction Mr. Chrestian himself purchased the proprietary interest in Chakai Taluka on 16th June, 1931 and then took delivery of the estate through the Court in 1934.

Before Mr. Chrestian commenced his action in Title Suit No. 150/21, one Pitamber Rai, the ancestor of the defendants (present respondents) had filed a Money Suit No. 22/1919 against Tikait Chandi Prasad for recovering dues from him and this suit ended in a money decree. Execution Case No. 22/21 was commenced by Pitamber Rai for sale of the lands involved in the present appeal and he himself purchased the same at a Court auction along with some other lands included in Khata Nos. 140 and 146. After the sale was confirmed Pitamber Rai obtained delivery of possession on 10th October, 1924. A petition by judgment debtor Tikait Chandi Prasad for setting aside Court sale under Order 21, Rule 90, Code of Civil Procedure, did not meet with success.

On 18th April, 1943 Mr. Chrestian sold his proprietary interest in Chakai Taluka to Rai Bahadur S. K. Sahana, the plaintiff in the present litigation and he claimed to have obtained possession of the lands purchased by him.

The plaintiff filed Title Suit No. 15/46 against the respondents defendants for recovery of possession of the suit lands alleging that the suit lands were proprietor's private lands and were in actual cultivating possession of Tikaits from time immemmorial. Alternatively it was the plaintiff's case that even if it be held that Tikait Chandi Prasad had occupancy ryoti rights over the suit lands, the same had merged with his proprietary rights and, therefore, the character of the land would be bakast lands of the proprietor and the defendants respondents would have no vestige of title for

continuing in possession and they would be trespassers. This suit was dismissed by the trial Court and the first appeal by the plaintiff to the High Court failed. What is historically relevant for the present litigation is that the High Court held in its judgment dated 23rd September, 1952 in First Appeal No. 355/47 that the defendants (present respondents) or their ancestors had not acquired any ryoti interest with right of occupancy nor they had the status of tenure holders and they were mere tenants-at-will by virtue of rent receipt granted by Mr. Chrestian. Having so ascertained the character of possession of the respondents in respect of the suit lands, the High Court further proceeded to hold that the suit of the plaintiff was not maintainable because even tenant-at-will cannot be ejected without determining the tenancy in accordance with law. In other words, they were entitled to notice and no such notice was shown to have been served. Thus ended the first round of litigation started by the purchaser against the present respondents.

Taking cue from the judgment of the High Court, the plaintiff served notice to quit on the defendants and commenced an action in ejectment in Title Suit No. 60/53. During the pendency of the suit the plaintiff died and his legal representatives were substituted and they continued the suit. The defendants contested the suit, inter alia, on the ground that on the issue of a notification dated 12th April, 1953 published in the Government Gazette dated 14th May, 1953 under s. 3 of the Bihar Land Reforms Act, 1950, ('Act' for short), the estate of the plaintiff had vested in the State and, therefore, the plaintiff was not entitled to evict the defendants. The trial Court negatived the contention of the defendants holding that they were not occupancy tenants of the suit lands as alleged by them but they were mere tenants-at-will as held by the High Court in the earlier round of litigation and their tenancy having been properly terminated by a notice to quit, the plaintiff was held entitled to a decree for possession. Issue No. 3 framed by the trial Court was whether the plaintiff had a right to file the suit for possession after vesting of the estate in the State ? The trial Court held that as the plaintiff had a right to take possession the land could be deemed to be in his khas possession within the meaning of s. 6(1)(b) of the Act, and, therefore, plaintiff would be entitled to evict the defendants, the inter-

vening vesting of the estate in the State would not abrogate plaintiff's right to possession which accrued to him prior to the date of issue of the notification under s. 3.

Defendants (present respondents) preferred Title Appeal No. 17/60 which was dismissed as the appellate Court substantially agreed with the findings of the trial Court. Defendants preferred Second Appeal No. 343 of 1964 to the High Court of Patna. The learned single Judge of the High Court was of the opinion that even if the defendants were in possession of the suit lands as tenants-at-will on the date of vesting of the estate, their possession of the suit land would not enure for the benefit of the intermediary (plaintiff) within the meaning of s. 6 of the Act. The High Court was also of the opinion that the right to take possession does not constitute khas possession within the meaning of s. 6(1)(b) of the Act. In accordance with these findings the High Court held that since the issue of notification under s. 3 the estate of the plaintiff vested in the State and the plaintiff, therefore, cannot seek, to evict the defendants. The High Court accordingly allowed the appeal of the defendants and dismissed the plaintiff's suit for possession. Hence the present appeal by the plaintiff.

Before the principal and the only contention canvassed on behalf of the appellants is examined in this case a brief reference to the relevant provisions of the Act would illumine the contours of the controversy.

The Act, as its long title shows, was enacted to provide for the transference to the State of the interests of proprietors and tenure-holders in land etc. and to provide for matters ancillary and incidental to such transference. Section 3 provided for passing and becoming vested in the State, the estate or tenures of a proprietor or a tenure-holder on the issuance of a notification. Section 4 provides for the consequences of vesting of the tenure or an estate, one such consequence being that on issue of a notification under s. 3 the estate or tenure including the interests of the proprietor or tenure-holder not only in land but in building or part of a building used for various purposes set out therein shall vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure, other than the interests expressly saved by or under the provisions of the Act. One such specific provision saving the interest of the proprietor, relied upon by the plaintiff is s. 6, the relevant portion of which reads as under:

> "6. Certain other lands in 'khas' possession of intermediaries to be retained by them on payment of rent as 'raiyates' having occupancy rights-(1) On and from the date of vesting, all lands used for agricultural or horticultural purposes, which were in 'khas' possession of an intermediary on the date of such vesting, including: -
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> (a) (i) proprietor's private lands let out under a lease for a term of years or under a lease from year to year, referred to in Sec. 116 of the Bihar Tenancy Act, 1885 (8 of 1885),
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> (ii) landlord's privileged lands let out under a registered lease for a term exceeding one year or under a lease, written or oral, for a period of one year or less, referred to in Sec. 43 of the Chota Nagpur Tenancy Act, 1908 (Ben. Act 6 of 1908).
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> (b) lands used for agricultural or horticultural purposes and held in the direct possession of a temporary lease of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock, and
>
> (c) land used for agricultural or horticultural purposes forming the subject matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover 'khas' possession thereof;

shall subject to the provisions of Sec. 7A and 7B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a 'raiyat' under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner".

There is no dispute that a notification dated 12th April, 1953 as contemplated by s. 3 was published in the Government Gazette dated 14th May, 1953. On the issue of the notification under s. 3 the

consequences as envisaged by s. 4(1) ensued, namely, the estate of the plaintiff vested in the State.

Mr. Sarjoo Prasad, learned counsel who appeared for the appellant plaintiff, contended that the land involved in this appeal was used for agricultural purposes and was in khas possession of the plaintiff who was an intermediary on the date of vesting as understood in clause (b) of sub-s. (1) of s. 6 and, therefore, by the operation of s. 6 the land stood settled by the State with the plaintiff who was an intermediary and he would be entitled to retain possession and consequently the plaintiff would be entitled to a decree for possession. Section 6 is an exception to s.

4. A notification under s. 3 would have the effect of vesting the estate or tenure of a proprietor or a tenure- holder in the State. Consequently an estate or tenure including all interests of the proprietor or tenure-holder as set out in s. 4 shall with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in the estate or tenure other than the interest expressly saved by or under the Act and according to the plaintiff his interest was expressly saved as his case is covered by s. 6(1).

Section 6(1) provides that all lands used for agricultural or horticultural purposes which were in khas possession of an intermediary on the date of vesting shall be deemed to be settled by the State with the intermediary and he shall be entitled to retain possession thereof and hold the same as a raiyat under the State having occupancy rights in respect of such lands subject to certain conditions specified in the section.

According to the plaintiff he was in khas possession (as the word is understood in the Act) of the suit lands used for agricultural purpose on the date of vesting and, therefore, under s. 6 the lands are deemed to be settled by the State with him as intermediary and, therefore he is entitled to retain possession thereof. The expression 'khas possession' is defined in s. 2(k) as under:

> "2. Definitions. In this Act, unless there is anything repugnant in the subject or context-
>
> (k) 'khas possession' used with reference to the possession of a proprietor or tenure-holder of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure-holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock;

Explanation-"Land used for horticultural purposes"

> means lands used for the purpose of growing fruits, flowers or vegetables".

The contention is that as the respondents were tenants- at-will of the suit land as held by the High Court in the former litigation inter partes, the plaintiff could evict them at his sweet will and, therefore, the plaintiff could be said to be in khas possession of the suit land within the meaning of the expression as understood in the Act and the plaintiff is entitled to evict the defendants. It was

said that the tenant-at-will has no certain or sure estate in the land which can be asserted against the landlord of such tenant- at-will and, therefore, the landlord can be said to be in khas possession of the land even if it be in actual possession of the tenant-at-will. Woodfall on "Landlord and Tenant", 27th Edn., Vol. I, p. 279, says:

> "A tenancy at will is where lands or tenements are let by one man to another, to hold at the will of the lessor; in this case the lessee is called tenant at will, because he has no certain or sure estate for the lessor may put him out at any time he pleases. Either party may at any time determine a strict tenancy at will, although expressed to be held at the will of the lessor only, and the landlord may determine it by a demand of possession or otherwise without a previous formal notice".

At p. 30 it is observed that a tenant-at-will cannot demise, for that would amount to a determination of his estate at will; but a purported demise, with possession thereunder, will create a tenancy by estoppel as between him and his lessee, and will be good as against himself.

It was said that if such be the position of a tenant- at-will, the case would fall within the latter part of the definition of khas possession which provides that if landlord is cultivating such land himself with his own stock or by his own servants or by hired labour or with hired stock, such cultivation would constitute khas possession of the landlord. An identical expression is used in s. 6(1)(b) which provides that lands used for agricultural or horticultural purposes and held in direct possession of a temporary lease of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock would be deemed to be in khas possession of the intermediary. It was, therefore, said that there is no marked or noticeable difference between a tenant-at-will who can be evicted by mere demand of possession and cannot resist the demand for possession, and a hired servant or a hired labourer or a man made to work by hired stock. It was said that if in latter case the statute considers the land to be in khas possession of proprietor a fortiori, in the former case as well it must be treated in khas possession of intermediary or proprietor. Mr. Sarjoo Prasad said that khas possession within the meaning of s. 6 comprehends within its ambit the right to take possession. In other words, it was said that if on the date of vesting in respect of land used for agricultural purpose the intermediary had a right to take possession from a person who could not resist an action for possession, for the purpose of s. 6 the intermediary would be deemed to be in khas possession of the land. The substantial point, therefore, which needs examination is: What constitutes khas possession within the meaning of s. 6 ? That necessitates examination of the position of a tenant-at-will vis-a-vis landlord, and even if it is held that a tenant-at-will has no sure estate or interest in the lease which can be set up against his landlord, whether his actual possession enures for the benefit of the landlord who should be said to be in khas possession through his tenant-at-will for the purpose of s. 6(1). The question is whether khas possession within the meaning of the expression in the Act and especially s. 6 thereof, takes within its sweep the right to take possession without any hindrance.

The proposition canvassed on behalf of the plaintiff may be first examined on principle. If a tenant-at-will actually cultivating agricultural land could be evicted by the landlord by merely demanding possession from him, does it imply that for all purposes the landlord himself is in

possession? This stands negatived by a decision inter partes. In the former suit filed by the plaintiff for possession the High Court after holding that the defendants were tenants at, will, declined to pass a decree for eviction holding that even tenant-at-will is entitled to a reasonable notice and in the absence of notice the plaintiff would not be entitled to a decree for actual possession. The High Court has thus recognised some right in the tenant-at- will which can be set up against the landlord who seeks to evict him. The judgment of the High Court in the former litigation concluded as under:

> "For all the reasons which I have given I am forced to the conclusion that the interest of the Roys (respondents here in) in the suit property is that of tenants-at-will holding from year to year, whose tenancy can only be terminated by due notice".

(Reuben, J.) The other learned member of the Bench concluded as under:

> "I, therefore, agree with my Lord the Chief Justice that the defendants could not be evicted from the disputed lands in the absence of a due notice to quit ending with the expiry of an agricultural year".

The decision of the High Court is not open to question at the instance of the plaintiff. The position concluded against the plaintiff is that the defendants were tenants-at-will of agricultural land and they were holding from year to year and, therefore, they could be evicted not only after termination of their tenancy by a notice to quit but such notice must expire with the agricultural year. Even if it be held that s. 106 of the Transfer of Property Act is not attracted, this being an agricultural lease, the fact remains that in respect of agricultural lease the notice to quit must expire with the end of agricultural year. It would not be correct to say that some reasonable notice would be sufficient to terminate the tenancy. The notice has to be one terminating the tenancy and the notice must expire with the end of the agricultural year. It is not in dispute that the agricultural year in Bihar ends, depending upon the custom in the area, around September. This becomes clear from the fact that the plaintiff has averred in the plaint that a notice dated 15th January 1953 terminating the tenancy of the defendants and calling upon them to surrender possession was served upon them and they were called upon to handover possession by 1st Aswin, 1361 F.S. corresponding to 24th September, 1963. Once it is concluded inter partes that even a tenant-at-will of an agricultural land is entitled to notice in consonance with justice and reason, he cannot be thrown out at any period during the year but the notice must expire with the end of the agricultural year. Any other approach would be unfair to the tenant-at-will. If he is left at the sweet mercy of the landlord he can be thrown out just after he puts in all his labour and the crop is ready for harvesting. A tenant under a lease of land used for agriculture would be entitled to a notice expiring with the end of agricultural year so that he may not be evicted after the crop is ready for harvesting and may not be exposed to unfair treatment at the hands of the landlord.

Thus, even if it is held that a tenant-at-will has no sure interest or estate, yet he is entitled to notice and he cannot be evicted without notice the duration of which would be dependant upon the nature of the lease. In the case of an agricultural lease, the notice must expire with the end of agricultural year. As a corollary it must follow that a tenant-at-will can hold out against his landlord if he is sought to be evicted without due process of law which would imply notice terminating tenancy, and

can continue to remain in possession against the landlord till the termination of the lease by a proper legal notice. In Halsbury's Laws of England, 3rd Edn., Vol. 23, p. 507, it is stated as under:

> "A tenancy at will is determinable by either party on his expressly or impliedly intimating to the other his wish that the tenancy should be at an end. Until the intimation is thus given the tenant is lawfully in possession, and accordingly the landlord cannot recover the premises in an action for recovery of land without a previous demand of possession or other determination of the tenancy".

An attempt was made inviting us to re-examine the position of a tenant-at-will vis-a-vis the landlord urging that no particular notice of any particular duration is necessary for evicting a tenant-at-will. It was said that a tenant-at-will has no certain or sure estate for the lessor may put him out at any time he pleases (see quotation from Woodfall extracted above). Reference was also made to Sudhir Kumar Majumdar & Ors. v. Dhirendra Nath Biswas & Anr.(1) wherein a learned single Judge of the Calcutta High Court held that the service of a formal notice to quit is not necessary for the termination of the tenancy-at-will. We find it difficult to subscribe to this view. Apart from the fact that in the former litigation inter partes which concluded the earlier suit brought by the present appellant, being dismissed on the only ground that the respondents who were tenants-at-will could not be evicted as their tenancy was not terminated by a notice to quit expiring with end of agricultural year, we have already extracted above an observation from Halsbury's Laws of England which also supports the view that notice terminating tenancy of a tenant-at-will is pre-requisite before he can be evicted. A tenant-at-will is nonetheless a tenant. The concept of tenancy-at-will has reference to duration and interest in the land of which the tenant is a tenant-at-will. He is not at the sweet will and mercy of the landlord. The Division Bench which disposed of the appeal inter partes on the earlier occasion, after examining a large number of authorities came to the conclusion that a tenancy-at-will has to be determined by a reasonable notice to quit and we are in agreement with the view of the High Court and we are not persuaded to agree with the opinion expressed by the learned single Judge of the Calcutta High Court. The view taken by the Division Bench of Patna High Court in F.A. No. 355 of 1947 between the parties to the present proceeding that a tenant-at-will of agricultural land cannot be evicted without a notice terminating the tenancy expiring with the end of agricultural year commends to us as laying down correct law.

It can thus demonstrably be established that a tenant- at-will is not holding possession on behalf of landlord but he has a vestige of title to it and holds on his own behalf and can set up his possession against the landlord till formality prescribed by law is undertaken by the land-

lord and he is evicted by due process of law. If a notice of a certain duration is necessary expiring with a certain event such as end of the agricultural year, till the end of the agricultural year the tenant, notwithstanding the fact that he is a tenant-at-will and under a notice to quit, will be able to hold on to his possession and keep the landlord at bay.

If such be the position of the landlord vis-a-vis his tenant-at-will, could the landlord be said to be in khas possession of the land when the tenant-at-will is in actual possession and holds out against the landlord and questions his right to be put in possession till a procedure prescribed by law is followed

by the landlord? In this very case the landlord in his earlier litigation for obtaining actual possession from the tenant-at-will failed to obtain a decree against the tenant-at-will because the landlord had not followed the procedure prescribed by law, viz., a notice to quit and determination of the lease. Could possession of such a tenant-at-will be said to be the possession on behalf of the landlord for the purpose of s. 6(1)?

A tenant-at-will is some one other than the landlord. If a tenant-at-will is cultivating land used for agriculture, the agricultural operation carried on by the tenant cannot be said to be cultivation of the landlord himself, nor the stock of the tenant-at-will can be said to be a stock of the landlord, nor the tenant-at-will can be said to be servant of the landlord or hired labourer, or the stock of the tenant-at-will can be said to be the hired stock of the landlord. When a servant or hired labourer is engaged or stock is hired the landlord has to pay such servant or hired labourer or for the hired stock. When a tenant-at-will is carrying on agricultural operations he does it on his own and merely pays rent to the landlord. The landlord does not pay the tenant-at-will for the agricultural operations nor for the stock employed by the tenant-at-will. There is a marked, noticeable and understandable difference between a tenant-at-will vis-a-vis the landlord and a servant or hired labourer employed by the landlord. Therefore, keeping in view the definition of the expression 'khas possession' in s.2(k), a cultivation of land by tenant-at-will could not be said to be cultivation by the landlord by himself or by his servants or by hired labourer. Accordingly, in such a situation the landlord could not be said to be in khas possession of the land in possession of the tenant-at-will who is in a position to hold out against the landlord unless his lease is determined in the manner prescribed by law.

Mr. Sarjoo Prasad, however, urged that the case would be covered by s. 6(1) (b). The requirements for attracting s. 6(1) (b) are in pari materia with the definition of khas possession save and except that if the land is held in direct possession of a temporary lessee of an estate or tenure and is cultivated by such lessee with his own stock or by his own servants or by hired stock or hired labour it shall be deemed to be in khas possession of the intermediary. Section 6(1) (b) envisages a temporary lease of an estate or tenure by the intermediary and if such lessee is personally cultivating the land included in the estate or tenure then the land would be deemed to be in khas possession of the intermediary. A tenant-at-will is not a temporary lessee of an estate or tenure. An estate or tenure is a certain kind of interest in land. It is such an element of interest in land which is described as estate or tenure and temporary lease of such an estate or tenure is envisaged by s. 6(1) (b). Such being not the case here, s. 6(1) (b) would not be attracted.

Analysis of s. 6 read with ss. 3 and 4 along with the definition of expression 'khas possession' in s. 2(k) of the Act would on principle unquestionably show that the land in possession of a tenant-at-will cannot be said to be in khas possession of the intermediary for the purpose of s. 6.

It was, however, contended by Mr. Sarjoo Prasad that khas possession in s. 6(1) takes within its sweep right to take possession. This position is no more res integra and is concluded by two decisions of this Court. In Surajnath Ahir & Ors. v. Prithinath Singh & Ors.,(1) it was contended that the expression 'khas possession' in s. 6(1) includes the subsisting title of possession as well. Negativing this contention this Court held as under:

"Reliance was placed by the High Court on the case reported as Brijnandan Singh v. Jamuna Prasad (AIR 1958 Pat. 589) for the construction put on the expression 'khas possession' to include subsisting title to possession as well, and therefore for holding that any proprietor, whose right to get khas possession of the land is not barred by any provision of law, will have a right to recover possession and that the State of Bihar shall treat him as a raiyat with occupancy right and not as a trespasser. We do not agree with this view when the definition of 'khas possession' means the possession of a proprietor or tenure-holder either by cultivating such land himself with his own stock or by his own servants or by hired labour or with hired stock. The mere fact that a proprietor has a subsisting title to possession over certain land on the date of vesting would not make that land under his 'khas possession'.

This view was re-asserted in Ram Ran Bijai Singh & Ors. v. Behari Singh alias Bagandha Singh(1) wherein this Court held that this equation of right to possession as khas possession is not justified on principle or authority.

The word used in s. 6 is not 'possession' but it is qualified by the adjective 'khas possession' its equivalent being 'actual possession' as the word is understood in contra-distinction to the word 'constructive possession'. Frankly speaking, the law has still not provided clear and unambiguous definition of the jurisprudential concept of possession. Number of angular approaches to the problem of possession can be referred to with confidence. Here we are concerned with what is called 'khas possession' in a statute for ushering agrarian reforms and, therefore, the purpose and object behind the legislation must inform the interpretative process. The interpretation must tilt in favour of the actual cultivator, the tiller of the soil. Dealing with this expression, this Court in Gurucharan Singh v. Kamla Singh & Ors.,(1) has observed as under:

"There are, therefore, three requisites of possession. First, there must be actual or potential physical control. Secondly, physical control is not possession, unless accompanied by intention; hence, if a thing is put into the hand of a sleeping person, he has not possession of it. Thirdly, the possibility and intention must be visible or evidence (sic) by external signs, for if the thing shows no signs of being under the control of anyone, it is not possessed;..! In the end of all, however, the meaning of 'possession' must depend on the context (ibid p. 153). May be, in certain situations, possession may cover right to possess. It is thus clear that in Anglo-American jurisprudence also, possession is actual possession and in a limited set of cases, may include constructive possession, but when there is a bare right to possess bereft of any domination or factum of control, it will be a strange legal travesty to assert that an owner is in possession merely because he has a right to possess when a rival, in the teeth of owner's opposition, is actually holding dominion and control over the land adversely, openly and continuously".

After thus observing this Court approved the ratio extracted above in Surajnath Ahir's case (supra) as also the ratio in Ram Ran Bijai Singh's case. (supra) It was, however, said that in both these cases the Court overlooked the fact that on redemption of a mortgage the mortgagee is bound to deliver possession of the mortgaged property to the mortgagor. In both these cases the question was whether the tenant inducted by the mortgagee in possession who had no right to continue in possession beyond the redemption of the mortgage could be said to be holding possession on behalf of the mortgagor as the mortgagor had a right to evict him and the tenant had no right to continue in possession against the mortgagor. It is true that ordinarily a mortgagee in possession is under a duty to surrender possession to the mortgagor on redemption of the mortgage. A tenant inducted by the mortgagee, unless he is protected by some other law, could be evicted by the mortgagor on redemption of the mortgage. The mortgagor may thus have a right to claim possession but once it is held that the right to recover possession cannot be equated with khas possession within the meaning of the expression used in the Act it would have made no difference in the ultimate decision of the Court even if the Court's attention was drawn to the fact that on redemption the mortgagee is bound to deliver possession to the mortgagor.

Reliance was, however, placed on Sonawati & Ors. v. Sri Ram & Anr.,(1) where in the context of the U.P. Zamindari Abolition & Land Reforms Act, 1951, and U.P. Land Reforms (Supplementary) Act, 1952, this Court examined the connotation of the expression 'cultivatory possession' and held that a trespasser who has no right to be in possession by merely entering the land by force cannot be said to be in cultivatory possession within the meaning of the aforesaid law. An observation in the context of a different scheme of law would not assist in analysing the concept of 'khas possession' in the Act. Further, a tenant-at-will enters possession with consent of landlord and till his tenancy is determined, he is in lawful possession and cannot be styled as a trespasser.

It thus becomes crystal clear that on 12th April, 1953 when the notification under s. 3 was issued the respondents tenants-at-will were under a notice to quit which would expire on 24th September 1953. Therefore, till 24th September, 1953 the respondents tenants-at-will were in actual and physical possession of the land and till that date could hold against the intermediary landlord. It may be that when the notice to quit dated 15th January, 1953 was served the intermediary landlord may have a right to take possession but till 24th September, 1953 when notice would expire the respondents were in actual possession and till then they could thwart any attempt of intermediary landlord to take actual possession. Therefore, on the date of the vesting i.e. 12th April, 1953 the intermediary was not in khas possessions within the meaning of s. 6(1) and when on that day his estate vested in the State he was not entitled to recover possession. After the vesting of the estate in the State which event had occurred prior to the institution of the suit he could not maintain an action for eviction as he had no more subsisting interest in the estate, his interest having vested in the State.

Mr. Sarjoo Prasad contended that an application under Order 41, Rule 27, Code of Civil Procedure, was given seeking permission to lead additional evidence which, if permitted, would tend to establish that the land was already settled with the plaintiff intermediary by the State as envisaged by s. 6 and, therefore it is no more open to the respondents to contend that the plaintiff intermediary was not entitled to the settlement of the land in his favour. Mr. Lal Narain Sinha,

learned counsel for the respondents countered this submission by saying that on the strength of decree of the trial Court such an order is obtained but the Court at this stage need not look into it because this Court should consider the rival contentions of the parties according to the facts and law as were available on the date of the suit. Obviously, if the plaintiff appellant has obtained some settlement of land on the basis of a decree of the trial Court or the first appellate Court which became interlocutory in view of the appeal preferred to the High Court and then to this Court, it is not open to the plaintiff to take any advantage of such a settlement. If this evidence is allowed to be admitted on record at this stage it might put the respondents at a disadvantage. Nor can the validity of that settlement be determined in this suit. Therefore, the rejection of this application is justified. The appellants may seek relief in respect of the so-called settlement in their favour as advised.

The last contention was that the appeal as a whole of the respondents should have been dismissed by the High Court in view of non compliance with the order made by the High Court on 8th March, 1967. Entry 11 in the order sheet of Second Appeal 343/64 shows that three day's time was granted by the Court to take steps for fresh service of notice of appeal on respondents 2, 4 and 8-11 failing which the Court directed that the appeal shall stand dismissed without further reference to Bench. This order appears to have been made because the respondents who were appellants before the High Court appear not to have made energetic efforts to make the appeal ready by completing the service. The next entry serial No. 12 dated 10th August, 1967 reads that seven day's final time was allowed to take steps to take out fresh notice as per the earlier order. This entry is signed by the Deputy Registrar. Entry 13 in sequence dated 19th August, 1967 reads that as order No. 12 which was final had not been carried out the matter be placed before the Bench for orders. Entry 14 dated 23rd August 1967 signed by the same learned Judge who had made order entry 11 directs acceptance of talbana (process fee) and C (costs), if filed in the course of the day. That order appears to have been carried out except with regard to respondents 11 and 4. Again the Deputy Registrar granted seven day's time. On 12th December 1967 the Registrar made the order that the matter should be placed before the Bench. There are some subsequent orders which are not very relevant. Mr. Sarjoo Prasad urged that the order at entry 11 directed that if the direction therein made was not carried out the appeal would stand dismissed without further reference to the Bench and that the subsequent entry shows that the direction was not carried out, and it was urged that the appeal stood dismissed and, therefore, the appeal no more survived for consideration on merits. We find no merit in this contention, firstly, because this contention was not taken before the High Court though it was available to the present appellants who were respondents before the High Court. The contention could be said to have been abandoned and once it is abandoned it cannot be re-agitated before this Court vide decision of this Court in Jayarama Reddy & Anr. v. Revenue Divisional Officer & Land Acquisition Officer, Kurnool.(1) Apart from this, if the Court fixes time for doing a certain thing, the Court always retains the power to extend the time and the same learned judge of the High Court who made order at entry 11 extended the time as per order at entry 14. Therefore, it cannot be said that the appeal stood dismissed.

Accordingly, there is no merit in this appeal and it fails and is dismissed with costs.

P.B.R. Appeal dismissed.