

## Nurul Hasan Khan vs Krishna Lal And Ors. on 8 November, 1950

**Equivalent citations: AIR1951ALL581, AIR 1951 ALLAHABAD 581**

### JUDGMENT

Kidwai, J.

1. On 9-8-1937 a document purporting to be a permanent lease was executed, by Suraj Bali and Chandra Bali, defendants 2 and 3 in favour of Nurul Hasan Khan, defendant 1. On 3-3-1947, Sri Krishna Lal and Bhabhuti instituted the suit out of which this appeal arises for possession of the property covered by the perpetual lease.

2. They gave a pedigree with their plaint and alleged that they themselves, defendants 2 and 3 Ram Milan, and Ram Dularey were members of a joint Hindu family to which the property belonged; that defendants 2 and 3 were the kartas of the family and had executed the lease and that the lease was in excess of the power of a karta and not binding upon the plaintiffs.

3. Defendant 1 filed a written statement in which he pleaded that Section 180 barred the suit: that the document of lease was valid and that the defendant was not a trespasser. They raised other pleas also but it is not necessary to go through them at this stage.

4. The learned Munsif framed several issues, one of which related to the question whether the suit was barred by Section 180, U. P. Tenancy Act. He found that the suit was so barred and he directed the plaint to be returned for presentation to the proper Court.

5. The plaintiffs appealed and the learned Civil Judge of Faizabad allowed the appeal and held that the suit was within the jurisdiction of the Civil Court. Defendant 1 has come up in miscellaneous appeal against the order of remand. It has been contended on his behalf that the question involved in this case is of a nature covered by Section 180, U. P. Tenancy Act, and, therefore, the Civil Court had No jurisdiction.

6. The jurisdiction of the Civil Court is only barred Under section 242, U. P. Tenancy Act. Before that section can apply, it must be shown that this is a suit or application of the nature specified in Sechedule 4, U. P. Tenancy Act. In Sechedule 4 group B, serial No. 18 provides for a suit Under section 180, Tenancy Act, for ejectment of a person occupying land without title and for damages. A reference to Section 180 shows that the suit under that section can only be brought by the person entitled to admit another to occupy the plot of land in respect of which the suit was brought.

7. In the present case, it is admitted in the plaint itself that there are at least six co sharers of co-parceners in the zamindari right and that defendants 2 and 3, the persons who actually granted the lease, are the kartas of the family. In view of Section 24G, Clause (1) the suit for possession

Under section 180 could only be brought by all persons interested unless they had appointed an agent to act on behalf of them all. In the present case it is only defendants 2 and 3 who would under the Hindu Law be agents to act on behalf of all the members of the joint family. It is not they who had brought the suit but two other members who are not agents and are not authorised under the Hindu Law to institute the suit.

8. It is not claimed in the plaint or in the course of the proceedings that the plaintiffs were entitled to admit a tenant to occupy the land in suit. That being so, the suit was not of a nature covered by Section 180, U. P. Tenancy Act. There was no bar, therefore, to the trial of the suit Under section 242, U. P. Tenancy Act.

9. The learned Advocate for the appellant relied upon Basdeo Narain V. Muhammad Yusuf, A. I. R. (15) 1928 ALL. 617 : (51 ALL. 285) and Maula Dad Khan v. Sri Thakur Radha Kaulji, A. I.R. (22) 1935 ALL. 629 : (158 I. C. 36) in support of his contention that it is the Revenue Court that has jurisdiction in such a case. The facts of both these cases were clearly different and the question of the jurisdiction of the Revenue Court was not involved.

10. In the first case it was held by a Bench that, in spite of the fact that the lease was invalid, the person holding under that lease had come to occupy the position, of a tenant and the only question was as to the fixation of rent. It cannot be disputed that it is the Revenue Court alone that has jurisdiction to determine the rent of a person who has become the tenant of agricultural land.

11. In the second case all that was done was to follow the first case and in that also emphasis was laid upon the power of the Revenue Court to determine rent. These two cases, therefore, do not affect the matter.

12. The appeal fails and is dismissed with costs.