

## Smt. Muradan Vs Board of Revenue, U.P. at Allahabad and others

**Court:** Allahabad High Court

**Date of Decision:** Nov. 15, 1972

**Acts Referred:** Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 & Section 202, 209

**Citation:** (1973) 43 AWR 73

**Hon'ble Judges:** G.C. Mathur, J

**Bench:** Single Bench

**Advocate:** Syed Sharafat Ali, for the Appellant; V.K.S. Chaudhary and S.C., for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

G.C. Mathur, J.

The Petitioner filed a suit u/s 202 of the UP ZA and LR Act for eviction of Respondents Nos. 4, 5 and 6 from the plots in dispute. The suit was dismissed by the trial court as time barred. The view of the trial court has been upheld in appeal by the Addl. Commissioner

and in second Appeal by the Board of Revenue. Hence this writ petition.

2. The only question which arises for determination is whether the suit filed by the Petitioner was or was not time barred. Parties have proceeded

throughout on the basis that the period of limitation for the suit was three years. The facts necessary for consideration of this question are as follows

: The Petitioner's mother Smt. Siddiqan, who was a widow, let out the plots in dispute to Karim, grandfather of Respondents 4 and 5 and to

Ghulam Rasool Respondent No. 6. Consolidation proceedings started in the village sometime in the year 1955. Smt. Siddiqan filed an objection

claiming that she was the sirdar of the plots in dispute. This issue was referred for adjudication to an arbitrator. In the meantime Smt. Siddiqan died

on April 33, 1956 and was succeeded by the Petitioner. On March 19, 1959 the arbitrator held that Smt. Siddiqan was the sirdar of the plots in

dispute. A few days thereafter on April 18, 1959 the village was identified u/s 52 of the U.P. Consolidation of Holdings. Act, A few days

thereafter on April 30, 1959 the Civil Judge confirmed the decision of the arbitrator and rejected the objections filed by the contesting

Respondents. On October 31, 1961 the present suit was filed by the Petitioner. The view which has been taken by the courts below is that since

the mother of the Petitioner died on April 30, 1956, the disability ceased on that date and the Petitioner should have filed the suit within three years

of that date and since the suit was filed beyond these three years it is time barred. The Petitioner's contention that no limitation could run during the

period when the consolidation proceedings were going on, was repelled by the courts below. They have held that the suit u/s 202 could be filed

even when the consolidation proceedings were going on.

3. Shri Sharafat Ali, learned Counsel for the Petitioner, has contended that the period of limitation for the suit u/s 202 remained suspended during

the consolidation proceedings and therefore, the suit which was filed within three years of the close of the consolidation proceedings was within

time. In support of his contention that the period of limitation remained suspended during consolidation proceedings he has relied upon the

judgment of a Full Bench of this Court in Badal v. Dy. Director of Consolidation 1970 AWR 456. This was a case of a suit u/s 209 of the UP ZA

and LR Act. It was held in this case that on the issue of the notification u/s 4 of the U.P. Consolidation of Holdings Act, the period of limitation for

a suit u/s 209 remained suspended. The Full Bench relied upon a decision of the Supreme Court in Ram Adhar Singh v. Ram Roop Singh 1968

AWR 14. In this case the question was whether a suit for possession. u/s 209 pending on the date of the Section 4 notification could be abated u/s

5 of the Act. The Supreme Court held that such a suit could be abated u/s 5. It held:

Suits for possession as such are not expressly referred to in the amended Section 5 of Act XXI of 11966 but the expression "every suit and

proceeding in respect of declaration of rights or interest in any land" are comprehensive enough to take in suits for possession of land, because,

before a claim for possession is accepted, the court will have, necessarily, to adjudicate upon the right or interest of the Plaintiff, in respect of the

disputed property, taking into account the Claim of the opposite party. Therefore the suit, instituted by the Respondent and the appeal arising out of

that suit is covered by the amended Section 5 of the Act.

4. Shri V.K.S. Chaudhry, learned Counsel for Respondents Nos. 4 to 6, contended that through the period of limitation for a suit u/s 209

remained suspended during Consolidation proceeding the period of limitation for a suit u/s 202 does not remain so suspended. The distinction

which he draws is that in the case of trespassers complete relief can be given to the tenure-holder by putting him in possession of the chak thereby

obviating the necessity of filing a suit u/s 209. But in the case of an Asami, the Asami cannot be put out of possession by the consolidation

authorities and that can only be done by a regular suit u/s 202. There is certainly some distinction between suits Sub-sections 209 and 202 but in

both suits there is first to be a determination of the title of the Plaintiff before any decree for eviction can be passed, whether it be a case of alleged

trespassers or alleged Asamis. It has not been disputed that the determination of the question of title can only be made by the consolidation

authorities and not by the regular civil venue courts so long as consolidation proceedings continue. Therefore, even if a suit u/s 202 were filed it

cannot proceed so long as consolidation proceedings continue and can only proceed after consolidation proceedings are over. That being so, it is

obvious that even in the case of alleged Asamis no relief can be obtained in a regular suit until the question of title has been finally determined by the

consolidation authorities. Therefore, on principle there can be no distinction so far as filing of the suits of the two kinds are concerned. In the two

cases referred to above also the decision that the period of limitation remained suspended is not based upon the question whether actual

possession can or cannot be obtained in consolidation proceedings but is based on the fact that the determination of title can only be made by the

consolidation authorities. Even in respect of a suit u/s 202 a Division Bench of this Court in Indal v. Sheo Mohan 1969 AWR 1837 held that the

period of limitation for such a suit is arrested during, consolidation proceedings. It was held in this case that non filing of a suit u/s 209 or u/s 202 of

the UP ZA and LR Act after the start of consolidation proceedings cannot affect the right of the tenure-holder to get appropriate relief.

5. From what has been stated above, it is clear that the suit u/s 202 could not have been filed while consolidation proceedings were pending. That

being so, the period of limitation could only start after the consolidation proceedings; were over. The notification u/s 52 was issued on April 18,

1959. The suit Which was filed on October 31, 1961 was well within three years from this date. The lower courts have taken a wrong view of the

law in holding that the Petitioner's suit was time barred. The suit was well within time."

6. The writ petition is accordingly allowed. The judgments and Decrees of the courts below are quashed. The case is remanded to the trial court

for a fresh decision on merits. Issue No. 4 whether the suit is within limitation has already been decided in favour of the Plaintiff-Petitioner. Parties

will bear their own costs of the writ petition.