

(1915) 07 AHC CK 0004

Allahabad High Court

Case No: None

Nathu and Another

APPELLANT

Vs

Musammat Gokalia and Another

RESPONDENT

Date of Decision: July 19, 1915

Citation: 30 Ind. Cas. 215

Hon'ble Judges: Henry Richards, C.J; P.C. Banerji, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit in which the plaintiffs claimed possession of an occupancy holding. The holding at one time belonged to one Parbhu. He died before the present Tenancy Act came into force. He was succeeded by his widow, who remained in possession for a number of years and died after the present Act came into force. The plaintiffs alleged themselves to be brothers and nephews of Parbhu, and two of them allege that they were joint in cultivation with Parbhu. The principal defendant is the daughter of Parbhu. The Court of first instance dismissed the plaintiff's suit and this decision was affirmed by the lower Appellate Court.

2. On behalf of the appellant the case of Musammat Sumari v. Jageshar 20 Ind. Cas. 7 has been cited; also an unreported decision in Second Appeal No. 1148 of 1914. On the other side the case of Dulari v. Mul Chand 5 Ind. Cas. 384 : 32 A. 314 : 7 A.L.J. 293 and also the case of Deoki Rai v. Parbati 23 Ind. Cas. 100 are cited. It seems to us that the plaintiff in a suit for ejectment had to prove a title vested in him which gave him a right to the possession of the land in dispute. Section 22 of the Agra Tenancy Act provides for the devolution of the interest of an occupancy tenant, but it is perfectly clear from the language of the section that it only provides for such devolution where the tenant dies after the passing of the Act. If we regard Parbhu's widow as the full tenant of the occupancy holding, the plaintiffs have no right, because they are not the male lineal descendants of Parbhu's widow, nor did they share in the cultivation with her. If we consider that Parbhu was the last full tenant and that his widow only succeeded to a widow's estate, then it seems to us that

Section 22 of the Tenancy Act has not provided for the devolution in such a case. It is admitted that at the time of Parbhu's death the present plaintiffs could not have succeeded even if Parbhu left no widow. In the unreported case to which reference has been made a learned Judge of this Court says, "the Board of Revenue appears to have taken a decided view that in circumstances like the present a succession would be governed by the provisions of Section 22 of Act II of 1901". We doubt if this statement is quite accurate. So far as we are aware the practice of the Board of Revenue is to look upon the party who has succeeded to the occupancy holding as the "full tenant". We have pointed out that even if this be the true aspect, the plaintiffs would have no right to succeed. We think that in principle the present case is governed by the case of Deoki Rai v. Parbati 23 Ind. Cas. 100. We think that the view taken by the Courts below was correct and ought to be affirmed. We accordingly dismiss the appeal with costs.