

**(1929) 12 AHC CK 0013****Allahabad High Court****Case No:** None

Shahzad Singh

APPELLANT

Vs

Bachoo Singh

RESPONDENT

**Date of Decision:** Dec. 13, 1929**Hon'ble Judges:** Bennet, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Bennet, J.

This is a Letters Patent Appeal brought by the defendants. The facts as found are that an occupancy tenant has made a usufructuary mortgage of a single plot 906 of his occupancy holding in the year 1889 when such a mortgage was held to be legal by this Court in the Full Bench case of Khiali Ram v. Nathu Lal [1893] 15 All. 219. The zamindar sued the tenant Faqir for arrears of rent and obtained a decree for Rs. 4-2-0 arrears, u/s 57(a) Act 2 of 1901, in the year 1924. To this suit the present appellants were not parties, and under Act 2 of 1901 it is not necessary for the landholder to make the present appellants parties, and the present appellants were subtenants under that Act. An application was made u/s 59 of that Act by the landholder to eject the tenant and u/s 71(1) of that Act a sublessee is no longer entitled to remain in possession. The defendants, however, resisted the landholder in obtaining possession and the landholder brought this suit in the civil Court to obtain possession. The trial Court and the lower appellate Court dismissed the suit of the plaintiff zamindar on the ground that the defendant mortgagees were entitled to remain in possession as their interests under their mortgage were not extinguished by the ejectment of the mortgagor. The learned Judge of this Court having considered the rulings at length has come to the contrary opinion, and he has decreed the plaintiff's suit for possession. For the appellants reference was made to the case of Bahadur Vs. Raja Moti Chand and Others, But that ruling dealt with the position of a mortgagee of a tenant under a perpetual lease who was entitled to mortgage his holding by the conditions of his lease. Accordingly the case

of a mortgagee from a tenant entitled to mortgage is entirely different from the case of the defendants who are merely in a position of subtenants under Act 2 of 1901. Reference was further made to Section 28 of that Act, but the proviso to that section states that the interest of the subtenant shall be extinguished if the tenant is ejected on any of the grounds specified in Section 57, and the ejectment in question was u/s 57(a). In *Khiali Ram v. Nathu Lal* [1893] 15 All. 219 it was laid down;

In order that the effect of our opinion may not be misunderstood and our decision be not misapplied, it is necessary to say that it is obvious to us that the interest in an occupancy holding of any person to whom an occupancy tenant sublets, or to whom he grants a usufructuary mortgage of land comprised in his occupancy holding will determine, if it has not previously determined, on the termination of the right of occupancy and can subsist no longer than the right of occupancy subsists.

2. Accordingly we consider that the decision of the learned Judge of this Court was correct, and we dismiss this Letters Patent Appeal.