(1963) 05 AHC CK 0005

Allahabad High Court

Case No: Second Appeal No. 3564 of 1958

Ram Dular Singh and Another		APPELLANT
	Vs	
Babu Sukhu Ram and Others		RESPONDENT

Date of Decision: May 10, 1963

Acts Referred:

- Transfer of Property Act, 1882 - Section 105, 111
- Uttar Pradesh Tenancy Act, 1939 - Section 295, 295A, 45, 47
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 20, 231, 240A

Citation: AIR 1964 All 498

Hon'ble Judges: M.C. Desai, C.J; V.G. Oak, J; R.S. Pathak, J

Bench: Full Bench

Advocate: Krishna Sharma, Ambika Pd. and K.L. Misra, for the Appellant; Viswanath Singh, U.N. Chatterji, R.B. Misra and Man Mohan Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

Desai, C. J.

1. This case has been referred by Mithan Lal, J., to a larger bench for decision of the following questions :-

"2. Did the appellants become adhivasis of the disputed land under the provisions of Section 20 (a) (ii) of the U. P. Zamindari Abolition and Land Reforms Act from the commencement of the said Act and then became sirdars after proceedings under Chapter IX-A of the said Act?

3. Alternatively have the appellants become adhivasis u/s 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act and thereafter sirdars under Chapter IX-A of the said Act?

4. Whether even if the defendants-appellants became adhivasis are they liable to be ejected u/s 231 as they cannot be deemed to have held the land within the meaning of Section 240-A?"

Question No. 1, which is

"1. Whether notwithstanding the expiry of the term of quabuliat on 13-5-1951 the defendants appellants continued to be the sub-tenants of the plots in suit till the commencement of U. P. Zamindari Abolition and Land Reforms Act because

(a) of the enforcement of Section 295-A U. P. Tenancy Act, till 6/7th June, 1952, and

(b) the sub-tenancy has not been extinguished as required by the provisions of Section 45, U. P. Tenancy Act?"

has not been specifically referred to a larger bench because this question arising in the connected second appeals already stands referred to a larger bench. In effect, therefore, all the four questions are for answers by this bench.

2. On 14-5-1946 Bhagwan Das, who was the fixed rate tenant of the land in dispute, sublet it to defendants 1 and 2 for a period of five years. The lease was due to expire on 13-5-1951, but on 27-8-1947 Bhagwan Das transferred all his rights in the land to the plaintiff. The U. P. Tenancy Act which was in force then was amended by the U. P. Tenancy (Amendment) Act, No. X of 1947; one of the amendments was to insert Section 295-A in the Tenancy Act laying down that every person, who on 14-6-1947 was a sub-tenant was, subject to the provisions of Section 27 (3) of the Amendment Act, entitled to retain possession of his holding for a period of five years from 14-6-1947. Section 27 dealt with reinstatement of certain tenants who had been ejected from their holdings; a tenant who had been ejected u/s 165 or 171 or any person who was ejected u/s 180 of the Tenancy Act was given a right to apply for reinstatement within six months.

Similarly a tenant of sir who had become a hereditary tenant u/s 16 (1) and was ejected from his holding or any tenant who was dispossessed in consequence of any fraud or mis representation or undue influence was given a right to apply for reinstatement within six months. Sub section (3) dealt with the procedure to be followed by the Court; it was to give notice of the applicationn to the land-holder and to the tenant, if any, in possession of the holding. The proviso to Sub section (3) was to the effect that, if the holding was in the possession of any person to whom the land-holder had let it out before 1-9-1946, the Court instead of ordering his ejectment was to declare him to be the sub-tenant of the applicant and he was not liable to ejectment until after the expiry of three years from the date of the declaration. Thus the right granted by Section 295-A to a sub tenant to remain to possession upto 14-6-1952 was subject to the condition that the right was reduced to a right to remain in possession for three years from the date of the declaration, if any made u/s 27 (3) of the Amendment Act. section by an ejected tenant or person.

Defendants 1 and 2 were sub-tenants on 14-6- 1947 and by virtue of Section 295-A they became entitled to remain in possession upto 14-6-1952, even though the sub-lease was to expire on 13-5- 1951. On the expire of the sub-lease the plaintiff gave to them a notice to quit and, on their failing to respond, filed a suit on 31-8-1951 for their ejectment. A large number of persons were joined as defendants on the ground that they were related to defendants 1 and 2 or that they were recorded as Dar-Shikmis on their behalf over some of the land in dispute. While the suit was pending the U. P. Tenancy Act was repealed and the Zamindari Abolition and Land Reforms Act came into force with effect from 1-7-1D52. A fixed rate tenant became entitled to take or retain possession as a bhumidar u/s 18 (1) and a sub-tenant became entitled to take or retain possession as an adhivasi u/s 20 (a) (ii). u/s 240-A of the Zamindari Abolition and Land Reforms Act the right, title and interest of a bhumidar in land held or deemed to be held by an adhivasi ceased and vested in the State with effect from 30-10-1954 and the adhivasi became sirdar u/s 240-B.

The suit was contested by defendants 1 and 2 who claimed that they became adhivasis and subsequently sirdars. It was dismissed by the trial Court, which held that the defendants had become sirdars, but the appellate Court decreed it with respect to some of the plots. This second appeal was filed by defendants 1 and 2 against the decree. The contention of the defendants is that they held over as sub-tenants and consequently became adhivasis u/s 20 (a) (ii) and later sirdars u/s 240-B. On behalf of the plaintiff it was contended that the defendants were not in possession of the plots in respect of which the suit was decreed because they had sublet them to other defendants and, consequently, they could not claim the benefit of Section 295-A, that a sub-tenant from a fixed rate tenant automatically ceased to be a sub-tenant on the expiry of the period of sub-tenancy, that the defendants were not sub-tenants on 30-6-1952 and could not claim adhivasi rights u/s 20 (a) (ii) that they not being recorded occupants could not. claim adhivasi rights also u/s 20 (b) (i) and that even if they became adhivasis, they were by virtue of Section 231 of the Zamindari Abolition and Land Reforms Act subject to all liabilities to which they were subject on 30-6-1952. These contentions gave rise to the questions reproduced above.

3. The law regarding leases of immovable property contained in the Transfer of Property Act is as follows. u/s 108 (q) a lessee is bound, on the termination of the lease, to put the lessor into possession of the property. A lease of immovable property determines, vide Section 111, by efflux of the time limited thereby, surrender, forfeiture etc. Section 116 lays down that it

"a lessee ..... of properly remains in possession thereof after the determination of the lease granted to the lessee and the lessor or his legal representative accepts rent from the lessee .... or otherwise assents to his continuing in possession, the lease is..... renewed from year to year."

A lease includes an under-lease or sub-lease and the doctrine of holding over is applicable to a subtenant also. The effect of all this law is that a sub-lease for a fixed term determines when the term expires and, it the sub-tenant remains in possession thereafter and the tenant-in-chief accepts rent from him, or otherwise assents to his remaining in possession, the sub-lease is renewed from year to year. The law contained in the Transfer of Property Act, however, does not apply to leases for agricultural purposes, vide Section 117, and, therefore, it does not govern the cases before us. They are govern-ed by the law contained in the U. P. Tenancy Act.

4. The gist of the law regarding sub-leases contained in the U. P. Tenancy Act is given below. "Sub-tenant" meant a person who held land from its tenant and by whom rent was or would be payable and "tenant" included a sub-tenant except where the contrary intention appeared. The interest of a tenant was extinguished when he died hairless, when the land was sold in execution of a decree, when he was ejected in execution of a decree or order of a Court, when he surrendered or abandoned it, when the land was acquired by the State Govt., when he acquired the entire proprietary rights in the holding and when he was dispossessed and his right to regain the possession became barred by time; see Section 45. Section 47 provided that the extinction of the interest of a tenant operated to extinguish the interest of his sub-tenant. It will be noticed that Sections 45 and 47 dealt with extinction of the interest of a tenant and a sub-tenant holding under him only in certain circumstances which did not include efflux of the time for which the interest was created and in this-lespeot there was a departure from the law contained in the Transfer of Property Act. The interest of a tenant was not extinguished by efflux of the time for which the lease was granted to him. The expiry of the period of the lease had no effect on his tenancy rights. Section 48 provided that when the interest of a sub-tenant was extinguished he was bound to vacate his holding; there is no such provision in respect of extinction of the interest of a tenant.

A sub-tenant''s interest also was extinguished in the manner laid down in Section 45, i. e., it was not extinguished by efflux of the time for which the sub-lease was granted to him. The period of the sub-lease might have expired, but he continued to be a sub-tenant so long as he did not die heirless, did not surrender or abandon the holding, was not ejected in execution of a decree or order of a Court etc. The only effect of the efflux of time was that he became liable to be ejected tinder Section 175 (b), but, so long as he was not ejected, he continued to be a sub-tenant, because his interest was not extinguished. It made no difference that he was required on extinction of his interest to vacate his holding, whereas a tenant was not required to vacate his holding on extinction of his interest, because the question whether the holding should be vacated or not did not arise so long as the interest was not extinguished. As far as the question whether the interest was extinguished or not, the U. P. Tenancy Act made no difference between interest of a tenant and interest of a sub-tenant. I do not agree with the contention that Section 45 did not exhaustively mention the circumstances in which a tenant''s interest was

extinguished. It was as exhaustive as Section 111 of the Transfer of Property Act.

We were referred to Jalesar Sahu v. Raj Man-gal, 19 All LJ 616 : (AIR 1921 All 108 (2)) in which Walsh, J., observed that Sections 18 (c) and 83 of the Agra Tenancy Act were not exhaustive. What was held to be not exhaustive was the law contained in these sections as to how a holding could be surrendered and not the law contained in Section 18 as to how a tenancy right could be extinguished. That decision has no applicability in the instant cases. Ejectment of tenants was dealt with in Sections 155 to 186. No tenant could be ejected from his holding otherwise than in accordance with those provisions; see Section 157. Different kinds of tenants were liable to be ejected on different grounds. A sub-tenant was a non-occupancy tenant according to its definition in Section 31. A non-occupancy tenant was liable to be ejected u/s 171 for illegal transfer or subletting, u/s 172 for certain acts detrimental to the land or in violation of a condition of the lease or u/s 175 (b) on the ground that he was a tenant holding under a lease which had expired or was to expire before the end of the current agricultural year. The effect of these provisions was that a sub-tenant after the expiry of the period of the sub-lease remained a sub-tenant though subject to the liability to be ejected u/s 175 (b). His sub-tenancy right was not extinguished and he was not required to vacate the holding merely because the period of the sub-lease had expired. There is no substance in the contention that a sub-tenant simply got a right to be in possession and not a right to be a sub-tenant after the expiry of the period of the sub-lease. If he had a right to remain in possession it must be in one capacity or another and the only capacity in which he could remain in possession was that of a subtenant. Since his sub-tenancy right was not extinguished it continued and it could not be said that with effect from the date of the expiry of the period of the sub-lease he became some other kind of tenant. The right to remain in possession carried with it the liability to pay rent; he was not to remain in possession immune from the liability. So long as he remained liable to pay rent to the tenant-in-chief it meant that he was a sub-tenant. Consequently defendants 1 and 2 would have remained sub-tenants, by virtue of the provisions of Sections 43, 48 and 175 read with 31, upto 13-5-1951 subject to the liability to ejectment on certain grounds and thereafter'' subject to the liability to ejectment on one more grounds, namely that the period of the sub-lease had expired.

While they were sub-tenants Section 295-6 was added in the Tenancy Act on 1-1-6-1947. This Section which was to apply notwithstanding any contract to the contrary or anything contained in the Act or any other law gave them a right to retain possession of their holding for a period of five years ending on 14-6-1952. It is not stated in Section 295-A in what capacity the sub-tenant was to remain in possession and what happened to his right, it any existing, to remain in possession upto a certain date after 14-6-1947 The words "Notwithstanding any contract ..... the time being in force" suggest that his right to remain in possession upto 14-6-1952 was in supersession of all rights existing in his lessor''s favour under the contract of sub-lease or any of the provisions of the Tenancy Act, but not that his possession

was to be in a different capacity. The prolongation of the right to remain in possession could not be dissociated from the sub-tenancy right, out of which alone it arose. The liability to pay rent continued and this means that the sub-tenant was to remain a sub-tenant upto 14-6-1962.

If but for Section 295-A he would have been liable to be ejected u/s 175 (b) during this period of five years that liability was removed and he could not be ejected on the ground of efflux of time. No suit for his ejectment u/s 175 (b) could be instituted prior to 14-6-1952. He could be ejected under that provision after 14-6-1952 (really after 30-6-1952, see Section 176), but so long as he was not ejected he continued to be a sub-tenant. The result was that after the enactment of Section 295-A the two defendants were to continue as sub-tenants upto 30-6-1952, immune from any liability to ejectment u/s 173 (b) on the ground of efflux of the period of their sub-lease. The words "entitled to retain possession of his holding" support my conclusion that they were to remain sub-tenants because "holding" meant, as defined in Section 2 (7), a parcel of land under one lease, engagement or grant. If the land in their possession was to remain their holding, it meant that they were to remain in possession as sub-tenants. They were not ejected prior to 30-3-1952 and they continued to be sub-tenants on 30-6-1952, even though the instant suit for their ejectment was pending. The pendency of the suit did not affect their rights. On the date on which the suit was instituted they had already acquired the right conferred by Section 295-A to remain in pos-session us sub-tenants upto 30-6-1952, and the suit could, and should have been, dismissed on the ground that the plaint did not disclose any cause of action but it continued and they continued as sub-tenants.

5. The Zamindari Abolition and Land Reforms Act came into force on 1-7-1952 and the defendants acquired adhivasi rights u/s 20 (a) (ii) and the plaintiff acquired Bhumidari rights u/s 18 (i) as said in the beginning. This was the state of the parties'' rights upto 10-10-1954 when Act No. XX of 1954 came into force adding Sections 240-A, 240-B etc.. to the Zamindari Abolition and Land Reforms Act. As adhivasis the defendants were by virtue of Section 231 subject to all the rights and all the liabilities which they possessed, or were subject to. in respect of the land on 30-6-1952. On that date they were not liable to ejectment on the ground of efflux of time u/s 175 (b). They were immune from this liability upto 14-6-1952 on account of the provisions of Section 295-A of the U. P. Tenancy Act and between 14-6-1952 and 30-6-1952 on account of the provisions of Section 176, U. P. Tenancy Act. Since no suit could be brought between these two dates, it meant that they were immune from the liability. They could become liable on 1-7-1952, but before this date the U. P. Tenancy Act was repealed and they ceased to be sub-tenants and be came adhivasis The liability that was attached to their adhivasi rights was the liability existing on 30-6-1952 and this did not include the liability to be ejected u/s 175 (b). Therefore, as adhivasis they could be ejected on certain grounds but not on the ground of the expiry of the period of their sub lease, or the period of five years

prescribed by Section 295-A. In Manhoo Mal Vs. Mulloo and Others, decided to day I have dealt with the rights and liabilities of bhumidars against adhivasis.

6. The Removal of Difficulties Order does not help the plaintiff, because under the provisions of the U. P. Tenancy, Act itself his suit was liable to be dismissed as the defendants were not liable to be ejected.

7. The effect of the enforcement of Act XX of 1954 was, as stated in Manhoo Mal Vs. Mulloo and Others, that the plaintiff. erased to be a bhumidar and the defendants became sirdars, the plaintiff was left with no right to possession and the defendants were no longer under any liability to ejectment except as provided in Section 201 of the Zamindari Abolition and Land Reforms Act.

8. My answers to the questions are as follows:-

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Question 1  (a)--Yes.
           (b)--Yes.
Question 2     --Yes.
Question 4     -- No.
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Question 3--As regards question No. 3 the defendants were not recorded as occupants in the Khasra or Khatuni of 1356 F; they were instead recorded as sub-tenants. In order to understand what is meant by "recorded as occupant" in Section 20 (b) one must necessarily refer to the pro-visions of the Land Records Manual in force in 1356 F, because entries in Khasras and Khatunis were to be made in accordance with its provisions. Paragraphs 83 (ii) and (iii), 84 (a) (ii), (e), etc., and 85 contained provisions regarding Dawedar Qabiz and Qabiz entries in the remarks column in addition to entries of names of tenure-holders and sub-tenants in columns 5 and 6 of the Khasra. As there are no other provisions regarding entries or occupation barring this, "recorded as occupant" must mean recorded as Qabiz or Dawedar Qabiz as provided in these provisions. Tenure-holders'' and sub-tenants'' names are entered in columns 5 and 6 of the Khasra even if they are not in possession; their names are entered there because they possess certain rights. An entry of Dawedar Qabiz or Qabiz is an entry of occupation simpliciter. According to the Land Records Manual sir and Khudkasht holders, tenants, and sub-tenants were to be entered in column 5 of the Khasra and if other persons were in actual occupation they were to be recorded as "occupants" in the remarks column in accordance with the provisions of the paragraphs mentioned above.
Entries were made in columns 5 and 6 on the basis of entries in the previous papers regardless of actual occupation; even if a sir or Khudkasht-holder or a tenant or a sub-tenant was not in actual occupation his name would be entered in column 5 or 6 and the name of the person in actual occupation would be entered in the remarks column. Consequently entries made in columns 5 and 6 were not entries of

occupation at all and only the entries in the remarks column made with the words "Dawedar Qabiz" or "Qabiz". were entries of occupation and they are the entries referred to in Section 20 (b). They are entries in respect of persons having no right to be in occupation either as a proprietor or as a tenant or as a sub-tenant. When a tenure-holder''s name was recorded in the papers and no one else was recorded to be in occupation it meant that he himself was in occupation, but Section 20 (b) clearly was not meant to apply to him He was granted new tenancy rights under other provisions and Section 20 (b) was meant for persons who were not granted tenancy rights under them.

As I pointed out in Manhoo Mal Vs. Mulloo and Others, an adhivasi has no tenure like the one possessed by a bhumidar or a sirdar and has simply occupation subject to all previously existing rights and liabilities. Adhivasi rights were created for certain sub-tenants and for persons who had occupation and no proprietary or tenancy right on 30-6-1952. Therefore, the words "recorded as occupant" mean "recorded as nothing more than an occupant" They do not necessarily mean that the person is a trespasser or in unlawful occupation; an entry of occupation of a trespasser or a person in unlawful occupation is undoubtedly an entry of occupation within the meaning of the words, but they are not concerned to such persons. Any person in occupation, whether adverse or under licence, lawful or unlawful; is within the meaning of the words. Section 20 presupposes that it was possible for a person to acquire bhumidhari rights u/s 18 (2) or asami rights u/s 21 (h) in the land in which he could acquire adhivasi rights; the legislature did not contemplate that it was possible that any other right, such as bhumidari right u/s 18 (1) or sirdari rights or asami rights under other provisions of Section 21, or hereditary right accrued in the land in which adhivasi right accrued. This confirms that Section 20 was meant to cover cases other than those covered by Sections 18, 19 and 21, i. e., persons recorded as sir or khudkasht-holders, tenants, subtenants in the Khasra or Khatauni of 1356 F. were not within the meaning of the words "persons recorded as occupant" in those records.

In Bhal Singh v. Bhop 1963 All LJ 288 my brother Pathak and I had to deal with the words "was recorded as occupant" occurring in Section 20 (b). We said at page 290 that "an entry as occupant includes an entry as occupant as a tenant or under lawful title." On reconsideration I think that it is not correct and that an entry of occupation as a tenant or as a sir or khudkasht-holder is outside the scope of the words. I stand by the final decision in that case which was to the effect that a person who was recorded as an occupant could get adhivasi rights even though he was not in actual occupation and the entry was incorrect. I now agree with Kampta Pande v Banarsi Chanbe 1960 All LJ 34 and with the statement to the effect that "occupant" does not mean a tenant or sub-tenant in possession made by our brother Dhavan in Lalta Pande v. Mahendra Nath Pande 1963 All LJ 190. Therefore when the defendants were entered as sub-tenants in the Khasra and the Khatauni of 1356 F. they could not be said to have been recorded as occupants and they could not claim adhivasi

rights u/s 20 (b). Question No. 3 must therefore be answered in the negative.

Oak, J.

9. I have read the judgment prepared by the learned Chief Justice. I was at first inclined to take the view that, although Section 111 of the Transfer of Property Act does not in terms apply to agricultural leases, the principle underlying Clause (a) of Section 111 of the Transfer of Property Act applies to agricultural leases. But on further consideration, I have come to the conclusion that, the omission to mention efflux of time to Section 45, U. P. Tenancy Act (hereafter referred to as the Act) was deliberate and not accidental.

10. Chapter IV of the Act dealt with devolution, transfer, extinction, division, exchange and acquisition of tenancies, Section 45 of the Act provided for extinction of tenancies. Section 45 enumerated six circumstances, under which the interest of a tenant was extinguished. Efflux of time was not mentioned in Section 45 It was not seriously disputed that Section 45 applied to a subtenant also Section 111 of the Transfer of Property Act provides for determination of a lease of immovable property. According to Clause (a) of Section 111, Transfer of Property Act, a lease of immovable property determines by efflux of the time limited thereby. The Transfer of Property Act, was in force in India for many years before the U. P. Tenancy Act was enacted. The general principle that the right of a lessee comes to an end at the end of the period fixed in the lease was not likely to have escaped the notice of the legislature, especially as the rule has received statutory recognition in Section 111 of the Transfer of Property Act.

11. Chapter VIII of the U P. Tenancy Act dealt with ejectment. Section 157 of the Act stated:

"No tenant shall be ejected From his holding otherwise than in accordance with the provisions of this Act."

Sections 168 to 170 dealt with ejectment for arrears of rent. Sections 171 to 174 dealt with ejectment for illegal or detrimental acts. Obviously, these were provisions for ejectment of tenants. The headnote appearing above Section 175 was; "ejectment on other grounds" Section 175 provided for ejectment of a non-occupancy tenant on application A sub-tenant was a non-occupancy tenant. Section 175 ran thus:-

"Subject to the provisions of Section 19 a non occupancy tenant shall also be liable to ejectment on the application of the land holder on any of the following grounds, namely:

(a) that he is a tenant holding from year to year;

(b) that he is a tenant holding under a lease or for a period which has expired or will expire be fore the end of the current agricultural year."

12. The language of Clause (b) Section 173 was significant. The language of Clause (b) suggests that, although the period fixed under a lease had expired, the defendant was treated as a tenant on the date of the application. u/s 179, the application was converted into a suit. From Section 175 to Section 179, the defendant has ait along been described as a tenant. The headnote to Section 180 was: "ejectment of person occupying land without title." That headnote suggests that having dealt with ejectment of tenants from Section 163 to Section 179, the legislature now took up the question of ejectment of a trespasser. Ac-cording to Section 176, an application u/s 175 had to be moved between the 1st of July and the 30th of September. It was laid down in Section 178 that the tenant was not liable for costs incurred by the landholder in the application u/s 175. No such consideration was shown for a trespasser, when he was sued u/s 180 of the Act.

13. The language of Section 46 of the Act and the various provisions contained in Chapter VIII of the Act indicate that, the legislature was anxious to maintain continuity of possession of a tenant even after the expiry of the period fixed in the lease. Tenancy was not extinguished except in accordance with a method expressly recognised by the statute. In the present case, although the period fixed in the lease expired on the 13th or the 14th of May, 1961, the appellants'' rights as sub-tenants continued after the 14th of May, 1951-- at least till 31-8-1951 when the suit for ejectment was filed.

14. At this stage, Section 295-A or the Act came to the assistance of the appellants. u/s 295-A, the appellants became entitled to retain possession till June, 1952. It is true that it was not expressly stated u/s 295-A that, such possession would be as sub-tenants. But the reference to Sections 44 and 171 of the Act contained in Section 295-A, indicates that, such possession was to be as sub-tenants. The defendants-appellants were, therefore, entitled to retain possession till the middle of June, 1952.

15. If is true that the respondents filed a suit for possession in August 1951. But, in view of Section 295-A of the Act, the suit was premature. In view of Section 176 of the Act, an application for ejectment u/s 175 of the Act was not maintainable up to 30-R-1952 The net result was that, the appellants were entitled to retain possession as sub-tenants until 30-6-1952. So they became Adhivasis under U. P. Act No. 1 of 1951 Subsequently, the appellants'' rights as Adhivasis ripened into Sirdari.

16. I, therefore, agree that, questions Nos. 1, 2 and 4 should be answered in the manner indicted by the learned Chief Justice.

17. As regard question No. 3, the answer will depend upon the nature of entry against a particular place. The plaintiff claimed possession over 91 plots. The dispute is now confined to 60 plots. In his order of reference, the learned single Judge has pointed out that there were entries of various types against different plots Against some plots, the appellants were recorded as sub-tenants without any qualification

Against other plots, although the appellants were recorded as sub-tenants, certain other persons were recorded as Dar-shikmis. In the former case, the appellants were the recorded occupants. But in the latter case, the appellants were not the recorded occupants.

18. According to one view, in order to get the benefit of Section 20 (b) of U. P. Act No. I of 1951, the claimant must have some right to hold the land. According to another view, the provision is meant for the benefit of trespassers. In my opinion, the question whether a person has a title to hold certain land is irrelevant for purposes of Section 20 (b) of Act No. I of 1951. The expression used in Section 20 (b) is "recorded as occupant" All that a claimant need prove for this purpose is that his name was recorded as occupant. It is not diffident that that claimant''s name should somehow appear in the Khasra. The entry must indicate that the claimant occupied the field Section 20 (b) refers to entries in the Khasra and Khatauni of 1356 F. Usually entries in the Khasra and Khatauni are consistent with each other. But one readily conceives conflicting entries in the two registers. The Khasra is the primary register about possession or occupation. The Khatauni is prepared later. In the case of a conflict between the two registers, the entry in the Khasra should prevail for purposes of Section 20 (b). It will, therefore, be sufficient to discuss the various types of entries in the Khasra for 1356 F.

19. The simplest case is where the name of a person (P) was recorded in the column for tenants; and the column for sub-tenants and the column for remarks are blank. Here P was recorded as a tenant without any encumbrance. There is in law a presumption that possession follows title. The entry, therefore, indicates that, P was in pos-session over the plot in 1356 F. In other words, he was recorded as occupant. He is fully entitled to the benefit of Section 20 (b) of Act No. I of 1951.

20. Secondly, we may consider a case where P''s name appeared in the column for tenants Q''s name appeared in the column for sub-tenants, and the column for remarks is blank. In this case Q, the sub-tenant, was entitled to actual cultivation of the land. The entry indicates that, although P was the tenant-in-chief, the recorded occupant was Q. So, Q is entitled to the benefit of Section 20 (b).

21. Thirdly, let us suppose that, P''s name was entered in the column for tenants; Q''s name was recorded in the column for sub-tenant; and R was recorded in the column for remarks as Dawedar Qabiz or trespasser. In this case P and Q are supposed to have certain rights in the land; and R has no title. Nonetheless, the actual possession was of R. R being the recorded occupant, he is entitled to the benefit of Section 20 (b).

22. I have not examined the entries against the 60 plots in dispute in the Khasra of 1356 F. But I gather from the order of reference that, the appellants may get the benefit of Section 20 (b) with respect to 13 plots.

My answer on Question No. 3 is as follows:

"The appellants are entitled to the benefit of Section 20 (b) of U. P. Act No. I of 1951 for those plots only, against which their names were recorded as occupants in the sense explained above. Subsequently, the appellants became Sirdars of plots."

Pathak, J.

23. I entirely concur with the answers proposed by my Lord the Chief Justice.