

(1910) 05 AHC CK 0023

Allahabad High Court

Case No: None

Kalicharan and Others

APPELLANT

Vs

Musammat Utmi and
OthersRESPONDENT

Date of Decision: May 17, 1910**Citation:** 6 Ind. Cas. 581**Hon'ble Judges:** Tudball, J; Richards, J**Bench:** Division Bench

Judgement

1. This and the connected Appeals Nos. 598 and 629 of 1909, arise out of a suit in which the plaintiffs claimed, amongst other tilings, a declaration of their title as heirs to certain property. It appears that the last owner of the property was one Bisheshar Kori, who had a son Sheonandan Kori who married Musammat Utmi defendant No. 1. Sheonandan Kori predeceased his father leaving his widow the said Musammat (sic), Bisheshar Kori during his life-time made an application in the Revenue Court in which he stated that he had no heir except Musammat Utmi, that she was in possession with him, and that he wished her name to be recorded along with his own. This was with respect to 2 bighas out of 8 bighas fixed-rate tenure. It has been found that the plaintiffs are the next heirs of Bisheshar Kori assuming him to have died intestate. Musammat Utmi, after the death of her father-in-law, mortgaged the property to Sheo Rachli defendant No. 2. The Court of first instance decreed the plaintiff's claim for all the property, except tenancy land, and also declared that the mortgage, to which we have referred, was not binding upon the heirs of Bisheshar. The plaintiffs appealed against the decree of the first Court in so far as it dismissed any part of their claim, while the defendants appealed against so much of it as had been decreed. The lower appellate Court has held that the plaintiff's suit, in so far as it seeks a declaration of title to land held as fixed-rate tenancy, is barred by Section 95 of the Tenancy Act as being a matter cognizable only by the Revenue Court. It has also held that the effect of the mutation in favour of the Musammat was to give her the property, in respect of which the mutation had been effected, as an absolute estate of which she was entitled to make the, mortgage and this part of the plaintiff's suit was

dismissed.

2. The only point, which has been argued before us, is the question whether or not Musammat Utmi was entitled to the fixedrate tenancy in respect of which mutation was effected by Bisheshar. In our opinion, Musammat Utmi cannot be said to have acquired any estate whatever. All that she had as a sonless widow of Sheonandan was a right to maintenance. It is true that Bisheshar might, if he so wished, have made a gift in her favour. But we cannot read the application for mutation as a gift, and indeed it has never been set up as such. The Transfer of Property Act now requires that all gifts and transfers of property (save property under the value of Rs. 100) must be made by a registered instrument. Consequently neither Musammat Utmi nor her mortgagee can have any right in this property. Of course, Musammat Utmi has a right to maintenance. But that question does not arise in the present suit.

3. With regard to the other point, we think that Section 95 is not applicable to the present case. Suits referred to in that section are suits between landlords and tenants. We allow the appeal, modify the decrees of the Courts below by decreeing the plaintiff's claim in full with costs including in this Court fees on the higher scale.