**(1918) 06 AHC CK 0010**

**Allahabad High Court**

**Case No:** None

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| Gourish Narain Singh and Another | | APPELLANT |
| | Vs | |
| Matabadal Singh and Another | | RESPONDENT |

**Date of Decision:** June 7, 1918

**Citation:** (1918) ILR (All) 656

**Hon'ble Judges:** Tudball, J; Abdul Raoof, J

**Bench:** Division Bench

**Final Decision:** Dismissed

**Judgement**

Tudball, and Abdul Raoof, JJ.

The second appeal arisen out of a suit brought for the resumption of a muafi khidmati. It has been decreed by both the courts below. In the Court of first instance a plea was taken that the plaintiffs had no right to sue for resumption. That plea was decided in favour of the plaintiffs. The defendants appealed to the District Judge, but in that appeal did not again raise this point. In this second appeal this point has again been raised before us. For the decision thereof it is necessary to state a few facts. The zamindar of this village is His Highness the Maharaja of Benares. The plaintiffs are persons to whom a monthly payment in cash used to be made by His Highness as a grant of some sort or other. They approached him and asked him to substitute for this grant in cash a grant of land which they might hold and possess and if possible develop and improve. Accordingly the Maharaja gave to the plaintiffs a perpetual istimrari lease of the village in question. He transferred to them all rights of all sorts reserving only to himself an annual sum payable as rent with the right to re-enter in case of default of payment by the plaintiffs. In the body of the lease there is specific- mention of the muafi khidmati and other classes of muafi. By the terms of the deed the plaintiffs were given full powers over this, land. The plea taken on behalf of the defendants is that under the terms of Section 150 of the Tenancy Act, the only person who can sue for resumption is the proprietor of a

mahal or a portion of a mahal, that the proprietor is the Maharaja and the plaintiffs are not proprietors and therefore have no right to sue under this section. The reply on behalf of the plaintiffs is that the Maharaja''s rights u/s 150, as proprietor, having been transferred to the plaintiffs, such a transfer is not illegal or contrary to law, and as that proprietary right now vests in the plaintiffs, they, in the circumstances of the present case, must be held to be proprietors of the muafi, for the purposes of Section 150. There can be no doubt that the Legislature in Section 150, used the word "proprietor" and not "land-holder" and it is highly probable that the Legislature intended that the right to resume should be only in the proprietor and nobody else. We may assume this for the purposes of our decision. The question is whether in the circumstances of the present case this part of the proprietary right is vested in the plaintiffs or not by the terms of the lease. As we have mentioned above, the lease is a perpetual one, and all that the Maharaja reserved to himself was the right to receive an annual payment from the plaintiffs together with the right to re-enter in case of default. He clearly transferred to them all the other rights which go to make up the bundle of rights which constitute proprietorship. We think, therefore, that in the circumstances of this "case the plaintiffs, for the purposes of Section 150, must be deemed to the proprietors of the mahal. It must not be taken for granted that we hold that this would be the case in every instance of a lease granted by a proprietor. The rights of a lessee are defined by the terms of a lease, and in each case the court will have to look to the terms of the deed and see what rights were vested in the lessee. The only other point which is raised in the case has no force and requires no discussion. The decree of the court below is, in our opinion, correct. We dismiss this appeal with costs.