

(1950) 04 AHC CK 0020

Allahabad High Court (Lucknow Bench)

Case No: Application No. 167 of 1945

Ram Datt Singh and Another

APPELLANT

Vs

Ajodhia Singh and Others

RESPONDENT

Date of Decision: April 10, 1950

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Uttar Pradesh Agriculturists Relief Act, 1934 - Section 12

Citation: AIR 1952 All 446 : (1951) 21 AWR 16

Hon'ble Judges: Ghulam Hasan, J

Bench: Single Bench

Advocate: B.K. Dhaon and S.P. Awasthi, for the Appellant; Haider Husain, for Nos. 1, 2 and 4 to 7, for the Respondent

Final Decision: Dismissed

Judgement

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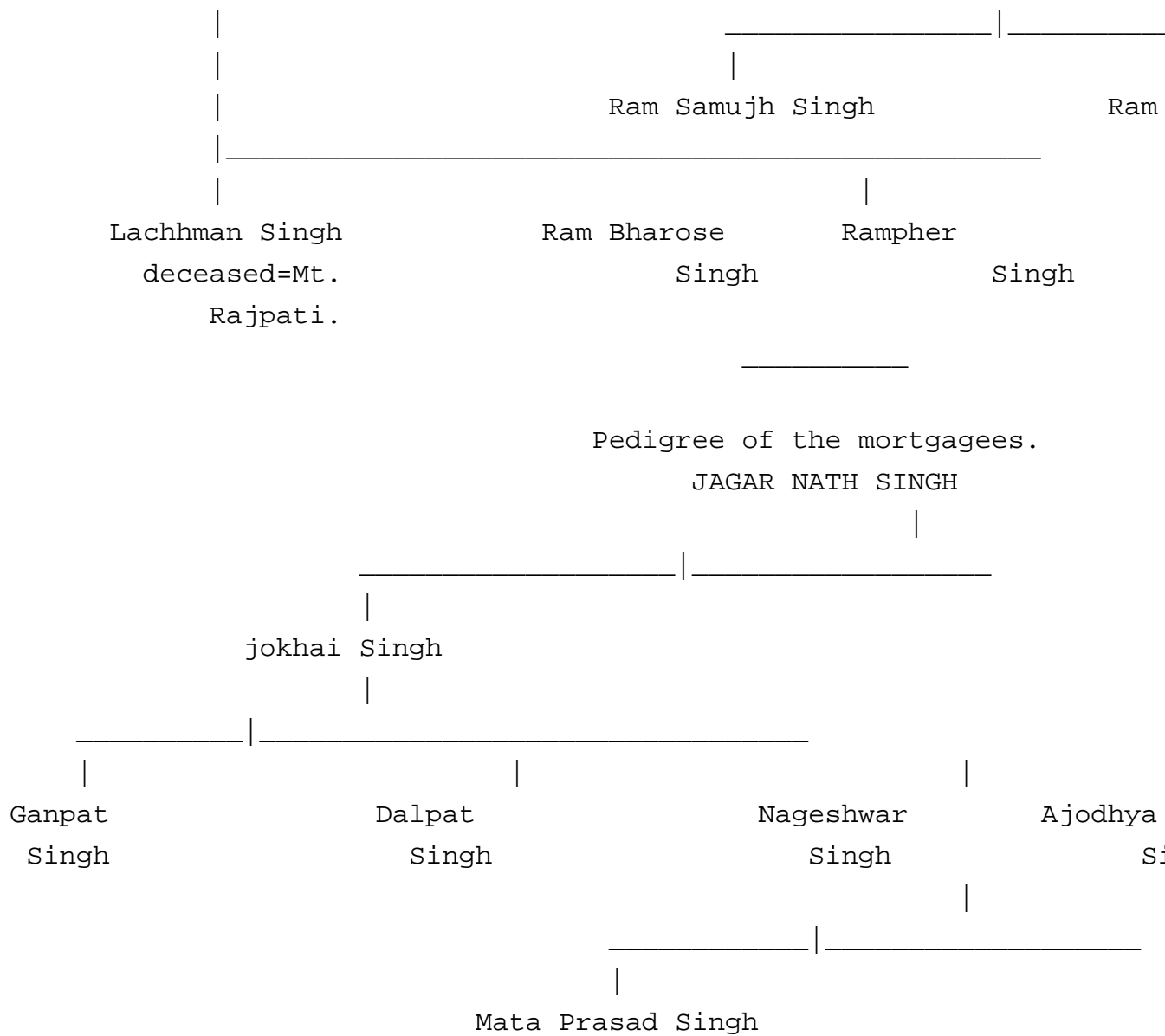
Ghulam Hasan, J.

This revision application is filed by the mortgagors and arises out of proceedings under S. 12, Agriculturists" Relief Act.

2. In order to properly appreciate the controversy it will be necessary to set out the pedigree of the parties.

Pedigree of the mortgagors
BINDA SINGH.

_____	_____
Ram Parsad Singh	Raghubar Singh
married to Vidya	married to Dilao Kuar.
Kaur	



3. On 23rd April 1920 a mortgage with possession was made by Ram Samujh Singh and Ram Dutt Singh under the guardianship of Dilao Kuar in favour of Ajodhya Singh and Ganpat Singh in respect of two plots, 494 second settlement=569 third settlement and 330 second settlement=407 third settlement for Rs. 190. The application, for redemption was made by Ram Dutt Singh against ten persons Ajodhya Singh, Amrej Sing and Mata Prasad Singh, (the two sons of Nageshwar Singh), Dalpat Singh, Ganpat Singh, Jokhai Singh, Mahadeo Singh, Ram Samujh Singh, and Vidya Kuar died during the pendency of the revision application and their legal representatives were not brought on the record. The reason for impleading persons other than the mortgagees as defendants given in para 8 of the plaint was that as Jokhai Singh and Mahadeo Singh and the sons of Jokhai Singh had acquired the mortgagee rights out of the joint family funds and all the descendants of Jagar Nath were members of the joint Hindu family governed by the Mitakshara and they were in possession of the mortgaged property, they were necessary parties to the suit. In the present revision application we are concerned only with plot no. 569. The material defence in respect of this plot was that Mahadeo Singh had no connection whatever with the mortgagees, that he was in possession as a tenant on a rental of

Rs. 6 per annum and was entitled to retain possession as such.

4. The Assistant Collector before whom the suit was filed framed among others the following material issue:--

1. Whether Mahadeo Singh is the tenant of plot No. 569?

He held that Mahadeo Singh had an interest in the property mortgaged and he was not in possession as a tenant but as mortgagee. He decreed redemption.

5. The learned District Judge on appeal held that there was no reliable evidence to show that the mortgage money was advanced from the joint family funds and therefore Mahadeo Singh was not a joint mortgagee of the land in suit. He accordingly held that

"the mortgagors-applicants should not, therefore, be entitled to actual possession of the said plot without determining the tenancy of Mahadeo Singh".

6. The mortgagors aggrieved by the decision have filed this revision and the sole ground mentioned is

"That Mahadeo Singh having been found to be the own uncle of Ajodhya Singh and forming a joint Hindu family with him in execution of the patta with respect to the plot in suit in his favour cannot confer any tenancy rights so as to defeat the right of the applicant to present possession after redemption".

7. As already stated during the pendency of this revision, Dalpat Singh and Vidya Kuar died and their legal representatives were not brought on the record. Though O. XXII, Civil P. C. does not apply to a revision application, it has been held that if after the admission of a revision a party dies and no application for substitution is presented within a reasonable time the application for revision abates in the sense that the proceedings shall cease unless good cause for delay is shown. *Khuda Bakhsh v. Mahanand Tewari* 1947 Oudh W. N. 221. No application for substitution was made in this case and the names were removed, but it is contended on behalf of the applicants that the revision cannot abate for the contest in the present revision is not between the mortgagors and the mortgagees in which were included Dalpat Singh and Vidya Kuar deceased and therefore there can be no question of conflicting decrees. This contention in my opinion has force. The deceased, who were impleaded as being interested in the mortgaged property were added as proforma parties and the real contest is between the mortgagors on the one hand and Mahadeo Singh as a tenant on the other the mortgagees not being interested in this controversy.

8. The first contention is that there being no patta or other evidence on the record regarding the tenancy of Mahadeo Singh beyond certain entries on the revenue papers, the lower appellate Court was wrong in holding that Mahadeo Singh was a tenant and therefore he should have been treated as a co-mortgagee being a

member of the Joint Hindu family. The finding arrived at by the lower appellate Court upon this point is a finding of fact which cannot be challenged in revision. *Badri Nath v. Ram Chandra* 1939 Oudh W. N. 193 and *Murli Shukul v. Lalita Singh* 1943 Oudh W. N. 169 The ground of revision referred to above admits the execution of a patta, though it is now agreed that there was no patta. There is no ground challenging the finding of the lower appellate Court on this point. All that is urged is that the mortgagors' right to present possession after redemption cannot be resisted by Mahadeo Singh claiming to be a tenant. The lower appellate Court merely mentions that Mahadeo Singh is in actual possession and he cannot be ousted from that possession in these proceedings but the Court comes to this conclusion without determining the question of tenancy.

9. The only question therefore which falls for determination is whether the mortgagors are entitled to actual possession as against Mahadeo Singh. Reliance is placed on *Ram Chand v. Raj Hans* 3 ALL 517 and [Gauri and Others Vs. Mangla and Others](#). The former was the case of a lease where the mortgagee, during the period of the mortgage, had transferred a portion of the mortgaged land under a lease. The mortgagor was directed to seek his remedy in separate proceedings. He applied to the Revenue Court to have his name recorded in respect of the tenancy plots but he failed. He then brought a regular suit for ejectment of tenants whom the mortgagee had let into possession and that suit was decreed. In the second case that mortgagees had made a sub-mortgage and their mortgagee interest had passed to the auction purchasers and they pleaded that they had taken the land from the auction purchasers as tenants and acquired occupancy rights therein. Such is, however, not the case here. Here the land is in the possession of a third person setting up tenancy rights. The learned Judge deals with this aspect in the following words:

"The argument is that instead of the original mortgagee themselves somebody else, had obtained a letting of the land and had acquired an occupancy right in the land it could not be said that he was a necessary party to the suit and that he should be ejected. The argument no doubt has some force, but in my opinion it ought not to be allowed to prevail. The mortgagees were bound by their contract to hand over the property to the mortgagor intact....."

The learned Judge recognised:

"There is no direct authority on the point either way. But on broad principles I am not at all inclined to let the original mortgagees, profit by an act of their own to the detriment of the interest of the mortgagor whose rights they were bound to guard on general principles recognised in S 76(e), T.P. Act."

In the present case the mortgage deed places no restriction upon the mortgagees. Be that as it may, those cases, are also distinguishable on the ground that they arose under the ordinary law. The present case arises in proceeding under S. 12,

Special Act. The point is however, covered by a decision of Seth J. in *Jagar Nath v. Srikant Dube* 1949 ALL. W.R. 205 decided on 23rd December 1948. It dissents from the case of *Ram Kirpal v. Bhagwati Saran* decided by Bhargava J. on 29th October 1948, and published in 1949 ALL. W.R 214. The judgement of Seth J. is so clear and exhaustive on the subject that I consider it wholly unnecessary to deal with the point beyond expressing my entire agreement with his view. The learned Judge held that

"the jurisdiction of a Court. deciding an application under S. 12, U. P. Agriculturists' Relief Act, whether as a Court of original jurisdiction or as a Court of appeal is a special jurisdiction conferred upon it by a special provision of the Statute and is limited within the four corners of that section. It has jurisdiction only to adjudicate upon the question of redemption and no more. Such Court has jurisdiction to record a finding on the question of tenancy."

The learned Judge followed his previous decision in an unreported case, *Bhagwati v. Ram Ugra* Civil Revision No. 1945 ALL 544 decided on 1st October 1948 and an unreported decision of Hamilton J. referred to at p 207 of the report. That was a case in which the mortgagee's father was impleaded on the allegation that his name stood fictitiously recorded as tenant over some of the plots and that as a matter of fact the mortgagees themselves were in possession of those plots. The mortgagees' father pleaded that he had no connection with the mortgagees and that he was in possession as a tenant similarly in the present case Mahadeo Singh does not claim any connection with the mortgagees and he claims the right to continue in occupation both against the mortgagor and the mortgagees. He does not claim this right as the representative of the mortgagees. Such a claim which is adverse both to the mortgagor and the mortgagee is foreign to a suit for redemption and in an application for redemption under S. 12 the scope is much more restricted I hold therefore, that the scope of S. 12 does not permit an investigation into the question of tenancy of a person claiming as a tenant both against the mortgagor, and the mortgagee, In *Ram Kirpal v. Bhagwati Saran* it was found that the mortgage was in actual possession and he got the name of his nephew fictitiously entered in the village papers in collusion with the patwari. The present is a much stronger case, for here Mahadeo Singh is claiming as a tenant and there is no suggestion that his name is entered in the revenue papers fictitiously in collusion with the mortgagees. I see no reason to differ from the view taken by Seth. J. and accordingly hold that the applicants cannot be allowed to have actual possession against Mahadeo Singh in these proceedings.

10. Lastly it was contended that if Mahadeo Singh was in possession as a tenant of the plot before to mortgage, then the applicants will have no claim to oust him but if he was let into possession by the mortgagees, then the mortgagors must be restored to their possession and in order to determine this question of fact the case should be remanded. I am not prepared to allow this matter to be gone into at this stage. The mortgagors put up no such case in the Courts below and I cannot allow

them to do so at this belated stage.

11. The result is that the application fails and is dismissed with costs.