

(1925) 01 AHC CK 0020

Allahabad High Court

Case No: None

Dungar

APPELLANT

Vs

Jahangir and Others

RESPONDENT

Date of Decision: Jan. 16, 1925**Citation:** AIR 1925 All 775**Hon'ble Judges:** Sulaiman, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Sulaiman, J.

This is a defendant's appeal arising out of a suit for ejectment. The Courts below have decreed the claim.

2. The lower appellate Court has found that the plots in suit wore sir and khudkhast of more than 12 years standing belonging to Man Singh exclusively, and that the defendant who is a daughter's son of Man Singh was recorded in the papers as a sub-tenant and has actually been paying rent as such to Man Singh, Man Singh gifted these plots to the plaintiffs-respondents who according to the Judge obtained mutation of names in their favour on the 3rd of August 1921.

2. The first point raised is that after the transfer in 1921 Man Singh became ex-proprietary tenant and that, therefore, the plaintiffs have no right to eject the defendant, a sub-tenant, but that the only person who can eject would be the ex-proprietary tenant. This point was never raised in either of the Courts below at all. The reason" obviously is that the point is altogether futile. The transfer in question was by way of a gift to the plaintiffs. u/s 10, Sub-clause (1) no ex-proprietary rights are created when there is an alienation by gift. It baa been contended before me that that exemption is confined to cases whore the gift is between co-sharers in the mahal. I am unable to accept this contention. Gift is not confined to that between co-sharers, but it is only exchange which is so confined.

This was the view expressed by the Board of Revenue in the case of Elahi Bux v. Nand Kishore (1915) 31 I.C. 906. I fully agree with the view expressed in that case. If the transfer is by gift the sir must retain its character in the hands of the donee.

2. The next point taken is that the plaintiff's have no locus standi to sue alone. It is urged that u/s 194 of the Tenancy Act the other co-sharers in the village ought to have been impleaded. There is absolutely no force in this contention. The learned Judge has pointed out that these specific plots belonged to Man Singh and that the plaintiffs-respondents have acquired these specific plots from the person who had exclusive possession of them as his sir and khudkasht for more than 12 years, and that the plaintiffs-respondents are the owners of these plots. The mere fact that there are other co-sharers in the same mahal does not give them any right or interest in these specific plots. The defendant is the exclusive tenant of the persons to whom these specific plots belong and these latter persons by themselves are entitled to reject him. It is wholly unnecessary to implead persons who though co-sharers in khewat or the mahal, have no interest in these specific plots. There was, therefore, no defect of non-joinder in the suit.

3. The third point raised is that the learned Judge was wrong in finding that the defendant and Man Singh were not members of a joint Hindu family. I am unable to appreciate the significance of this plea. Dungar is the son of a daughter of Man Singh. The daughter of Man Singh cannot in law be deemed to belong to Man Singh's joint family after she has been married away to another family. Her son does not belong to Man Singh's joint family. There is no rule of Hindu Law under which a daughter's son and his maternal grandfather are deemed to be members of a joint Hindu family.

4. Lastly it is urged that there is no evidence to support the finding of the learned Judge that these specific plots were transferred by Man Singh to the plaintiffs. There was no plea taken in the grounds of appeal, that there is no such evidence on the record. Had such a plea been taken it would have been the duty of the counsel for the appellant to examine the record beforehand and certify that such a plea was well-founded. The respondents' counsel cannot be taken by surprise at a late stage when the appeal is called on for hearing. I cannot allow this plea to be taken. I may also mention that Mr. Sanyal is not even at this moment prepared to certify that such a ground is well-founded. What he really asks is that he may be given half an hour's time to inspect the record to enable him to certify the plea. I cannot allow this.

5. The result is that this appeal is dismissed with costs.