

(1949) 10 AHC CK 0016

Allahabad High Court (Lucknow Bench)

Case No: Second Appeal No. 193 of 1944

Shambhu Datta

APPELLANT

Vs

Mst. Ram Raji

RESPONDENT

Date of Decision: Oct. 17, 1949

Acts Referred:

- Uttar Pradesh Tenancy Act, 1939 - Section 35, 36

Citation: AIR 1953 All 256

Hon'ble Judges: Malik, C.J; Chandiramani, J

Bench: Division Bench

Advocate: R.N. Shukla and Kalbe Mustafa, for the Appellant; R.B. Lal, for the Respondent

Final Decision: Dismissed

Judgement

1. This is a plaintiff's appeal. The suit was for possession of certain tenancy plots by the ejectment of the defendant. One Ram Charan was a tenant of holding situated in village Khamaria Chak Rakhauna in the district of Bahraich belonging to the Kapurthala estate. He died about the year 1895 and was succeeded by his widow, Mt. Radha. Under the Oudh Rent Act (22 of 1886) a widow was entitled to remain in possession of her husband's tenancy for the unexpired portion of seven years for which the tenancy was created. Mt. Eadha, however, continued to remain in possession of the property right up to 1912. In the year 1912, there was a fresh contract of tenancy and Mt. Eadha and Bhagwati Prasad, her brother's son, became tenants under a contract with the landlord. From time to time this contract has been renewed and the amount of rent fixed has been enhanced. Bhagwati Prasad died in 1927 and Mt. Eadha in 1940. The defendant, Mt. Ram Raji, as widow of Bhagwati Prasad, continued to remain in possession even after the death of Mt. Eadha in 1940. The plaintiff is Ram Charan's first wife's daughter's son and he is, therefore, no heir either to Mt. Eadha or to Bhagwati Prasad. It was claimed on behalf of the plaintiff that he was entitled to inherit this tenancy on the death of Mt. Eadha u/s 36, U. P. Tenancy Act. The case came for decision before a learned single Judge of this

Court and, in view of the decisions of the Board of Revenue and certain observations in a judgment of a learned single Judge of this Court, the learned Judge referred the case for decision by a Bench.

2. Section 36, U. P. Tenancy Act, provides for succession to a female tenant holding an interest inherited as a widow, etc., and the relevant portion of it is as follows :

"When a female tenant, other than a tenant mentioned in Section 34, who either before or after the commencement of this Act has inherited an interest in a holding as a widow dies such holding or such part of such holding shall, notwithstanding anything in Section 45, devolve in accordance with the order of succession laid down in Section 35 on the heir of the last male tenant, other than a tenant who inherited as a father's father under the provisions of that section"

The question for decision, therefore, is whether the holding that is now claimed by this plaintiff was in the possession of Ram Charan and was inherited by Mt. Eadha on his death in 1895. The section provides for succession to a holding inherited by a widow. If it is the same holding that was inherited by Mt. Radha, the plaintiff's suit should obviously succeed. In case, however, this is a different holding and not the holding which Mt. Badha inherited from her husband, then Section 36 will clearly not apply.

3. The decisions of the Board of Revenue do not relate to a case where there was a fresh contract entered with a widow after the expiry of the original term provided u/s 48, Oudh Rent Act. Those were all cases of a widow holding over after the expiry of the original period of tenancy. It is possible to take the view that in the case of a tenant holding over the nature of the tenancy is not changed and the widow, though she remained in possession after the expiry of the term mentioned in Section 48, continued to remain in possession of the property which she had inherited from her husband and as representing the estate of her husband. The case before the learned single Judge of this Court was also a case where a widow had been holding over after the expiry of the period mentioned in Section 48. These cases were, therefore, not relevant.

4. Learned counsel for the appellant has not been able to cite any decision in which, in spite of a fresh contract of tenancy, it was held that the fresh contract should be ignored and it should be assumed that the widow had remained in possession of the tenancy that she had inherited from her husband.

5. Under the Oudh Rent Act (22 of 1886) an heir of a deceased tenant was entitled to remain in possession of the holding for the unexpired period of seven years u/s 48 of the Act. The law was amended by Act 4 of 1921 which increased the period from seven to ten years and provided for a fresh period of five years for the heir of the deceased tenant with the result that he was entitled to remain in possession of the tenancy for a period of five years, no matter what the unexpired portion of the tenancy might have been. It made a further change and provided that if the heir

remained in possession for a further period of three years after the expiry of the five years, he would be deemed to be a statutory tenant.

6. In the case of *Sital v. Surajdin*, S. C. a. No. 421 of 1943, D/- 20-12-1948 (ALL.) as the widow had remained in possession from 1916 in which year her husband died right up to 1940 when she died, the learned single Judge assumed that after the expiry of five years and after she had remained in possession for a further period of three years after 1922 she must have become a statutory tenant in her own right, but the learned Judge was of the opinion that even to such a case Section 36 would apply. That question has not arisen before us in this case. In this case there was a fresh contract of tenancy in the year 1912 long before the Act of 1921 had come into force with the result that the tenancy which the widow had inherited from Ram Charan came to an end in that year. It is, therefore, not necessary to express any opinion on the point decided in *Sital's* case.

7. The decision of the learned single Judge, therefore, is not relevant to the point that has arisen for decision in this case. The appeal has no force and is dismissed with costs.