

(1945) 01 AHC CK 0021

Allahabad High Court

Case No: None

Madar and Another

APPELLANT

Vs

Tirath Raj and Others

RESPONDENT

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**Date of Decision:** Jan. 31, 1945**Acts Referred:**

- United Provinces Tenancy Act, 1939 - Section 247

**Citation:** AIR 1945 All 304 : (1945) 15 AWR 74**Hon'ble Judges:** Allsop, J**Bench:** Division Bench**Final Decision:** Dismissed

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**Judgement**

Allsop, J.

This second appeal arises out of a suit for arrears of rent which was dismissed by an Assistant Collector of the Second Class. The original defendants had pleaded that the plaintiffs were not the zamindars and that they had always paid the rent to the real zamindar Deo Narain. Deo Narain was impleaded under the provisions of Section 247, United Provinces Tenancy Act, 1939, and he raised the plea that he was the zamindar either in his own right or by adverse possession. The learned Assistant Collector framed an issue and remitted it to the civil Court which decided that Deo Narain had been receiving the rent and had acquired a title to the property by adverse possession. When the finding on the issue was returned to the Assistant Collector, he dismissed the suit saying that the civil Court had found that Deo Narain had acquired a title by adverse possession and that the other defendants had paid the rent to him in good faith. There was an appeal to the Court of the District Judge who disbelieved the evidence produced by the defendants and found that Deo Narain was not the zamindar and that he had not acquired any right by adverse possession. He mentioned all the witnesses produced by the defendants and said that he did not believe their evidence. That included the evidence of those who had deposed that Deo Narain had collected the rent.

2. It is argued in second appeal that the learned District Judge had no jurisdiction because no issue should have been remitted to the civil Court and the civil Court should not have decided any such issue with the result that no appeal would lie to the District Judge under the provisions of Section 286 (4) of the Act. Learned Counsel has referred to the provisions of Section 247 which is the section which allows a tenant against whom a suit has been instituted to raise the defence that he has paid the rent in good faith to some person other than the plaintiff. Learned Counsel urges that no question of proprietary title is raised by this defence. He is undoubtedly right upon that point, but there- is no law which precludes a defendant in a suit for arrears of rent from raising a question of proprietary title pure and simple, or in other words to say that the plaintiff is not entitled to succeed because he is not the zamindar. There may be a case where the defendant has not paid rent to anyone and it is admittedly in arrears. If that is so, it does not mean that he is precluded from raising, any defence to a suit instituted by a person. whom he knows not to be the zamindar. Deo Narain was impleaded as a defendant under the provisions of the Act and as he was a defendant he was entitled, to raise pleas. His plea was that he was the proprietor of the land. Undoubtedly the question of proprietary title did arise. Learned Counsel has referred me to the case in [B. Risal Singh and Others Vs. Hira and Others](#), . That was a case under the Agra Tenancy Act, 1926, and the learned Judges held in accordance with the provisions of Section 271 of that Act that no issue could be referred to a civil Court in a suit against a person alleged to be a tenant unless the defendant took the plea that he himself was the proprietor of the land. That decision does not apply to the provisions of Section 286 of the new Act, because those provisions are much wider. They say that an issue shall be referred to the civil Court if a question of proprietary right is raised in respect of the land which forms the subject-matter of the suit. They do not confine the reference of an issue to those cases in which the question of a proprietary right is raised by the tenant himself. It is undoubtedly true in this case that the question of proprietary right was raised that an issue was referred to the civil Court and that the civil Court decided the issue. In these circumstances an appeal did lie u/s 286 (4) of the Act to" the District Judge.

3. It has been urged also by learned Counsel for the appellants that there is no decision upon the question raised by them, that they had paid the rent to a person whom they believed in good faith to be the proprietor of the land. The finding of the civil Court of original jurisdiction was incidental merely to the question whether Deo Narain had acquired a title by adverse possession. The learned Munsif apparently believed the evidence of the defendant Madar, who said that he had paid rent to Deo Narain. The learned Judge has specifically stated that he disbelieves this?witness and all the other witnesses produced by the defendants. He must, therefore, have been taken to hold that there is no satisfactory evidence that the rent was paid to Deo Narain and no question of good faith can arise. There is no force in this appeal and I dismiss it with costs. Leave to appeal is refused.