

## Aidal Singh Vs Gyan Singh

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**Court:** Allahabad High Court

**Date of Decision:** March 14, 1924

**Acts Referred:**

North Western Provinces Tenancy Act, 1901 " Section 79

**Citation:** AIR 1924 All 615 : 79 Ind. Cas. 318

**Hon'ble Judges:** Daniels, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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## Judgement

Daniels, J.

This is a suit by a tenant against his landlord and a person claiming under his landlord to recover possession of an ex-

proprietary holding. It is on the face of it a suit of the nature described in Section 79 of the Tenancy Act, and as such not cognizable by the Civil

Court, and the Court below has so held. The appellant disputes this view.

2. Tikam Singh was an ex-proprietary tenant. He died three years before the suit leaving two illegitimate sons, one of whom is dead and the other

is a defendant in this case. Tikam Singh in his life-time agreed to pay an enhanced rate of rent. After his death the zemindars recognised his sons as

tenants and the latter have been in possession of the holding on payment of rent. The plaintiff is a brother of Tikam Singh and sues the zemindars

and Tikam Singh's surviving son to recover possession of the holding. The case is clearly one u/s 79 and the fact that the zemindars did not defend

the suit is immaterial. The nature of the suit is not affected by the question whether it is resisted or not. The appellant contends that Section 79 is

not applicable because he has, never held possession of the holding. This contention is negated by the authority of Badri Kasodhan v. Sarju Misr

22 Ind. Cas. 668 : 36 A. 55 : 123 A.L.J. 29. That suit was substantially on all fours with the present case. It was a suit brought three years after

the late tenant's death by a reversioner who had never obtained possession. This Court held that Section 79 applied and that it covered

constructive as well as actual possession. Referring to an earlier ruling which they followed the learned Judges say:

The principle underlying that ruling seems to be that, where a person claiming to have succeeded to a tenancy by right of inheritance finds that, on

endeavouring to take possession of the same, his right is denied and his possession ousted by the zemindar, he has suffered an ejection at the

hands of the landlord within the meaning of the section, and his appropriate remedy is by a suit under the Tenancy Act as indicated above.

3. The appellant refers to a case in Collector of Benares v. Shiam Das 28 Ind. Cas. 302 : 13 A.L.J. 329, but there the right under which the

plaintiff claimed, namely, a purchase under a mortgage decree, did not come into existence till three years after the original tenant had been ejected.

The principle of Badri Kasodhan's case 22 Ind. Cas. 668 : 36 A. 55 : 12 A.L.J. 20 was in no way dissented from but was recognised as good

law.

4. The appeal fails and I accordingly dismiss it under Order XLI, Rule 11.