

## Kewal Vs Ram Nayan and Others

**Court:** Allahabad High Court

**Date of Decision:** April 6, 2011

**Acts Referred:** Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 198(4), 9

**Hon'ble Judges:** Shishir Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Shishir Kumar, J.

Heard learned Counsel for Appellant.

2. This is a Defendant's second appeal arising out a Suit No. 357 of 1983 (Ram Lochan v. Kewal and others ) decreed partly vide its judgment

and order dated 7.2.2003. Appeal filed by Plaintiff-Respondent has been allowed. Hence, this appeal by Defendant.

3. The facts arising out of present second appeal as stated in the plaint is that Plaintiff is the resident of Mauza Ratnavey Pargana Athrauliya, Tehsil

Phoolpur, District Azamgarh. Arazai No. 977 which new number is 302, during consolidation has vested in the gaon sabha and on 14.9.1973, the

said plot measuring about 52 kari, patta was granted in favour of Plaintiff for the purposes of using as abadi. Possession was given to Plaintiff. On

the said plot there is a tree of Neem-Babool which is under the ownership of Plaintiff-Respondent. Towards east Plaintiff has constructed a marahi

and started living there. Due to poverty he could not raise construction. It appears that though Defendant has got no concerned with the said

property, Plaintiff wanted to raise certain construction, Defendant obstructed and has not permitted to raise construction then suit for relief claimed

has been filed.

4. Defendant filed written statement denying claim made in the plaint but he has admitted this fact partly that no construction has been made upon

the land of Plaintiff-Respondent. In case, on the basis of Commissioner's report, from 15 ka-2 about three hand south towards west it is the

property of the Defendant. Defendant No. 2 has also filed his written statement and denied claim and has submitted that Plaintiff and gaon sabha

has got no concerned with the property and Plaintiff has not submitted map and has not submitted that Arazi No. 977 measuring 52 kari cannot be

ascertained without survey and he is in possession of the property and this land was given by zamindars. From that date he is in possession of the

property in dispute before the date of vesting and u/s 9 of the U.P. Zamindari and Land Reforms Act, property has been settled u/s 9 and there is

a marahi and house of Defendant No. 1 which is standing from five to six years. According to him, no further construction has been made.

5. Trial court after considering the issue has framed eight issues and one of the main issues was whether property shown in the map as a, b, c and

d, Plaintiff is the owner in possession of the same land. Further issue was also framed that whether Plaintiff is entitled to get possession of the

property in question. In support of contention, Defendant has filed a copy of the order in Case No. 65 u/s 198 (4) of the U.P. Zamindari Abolition

and Land Reforms Act Algoo v. Ramdhari shownig therein that as regards allotment of Arazi No. 977 measuring about 52 kari, has been

cancelled in which Plaintiff was party to the proceeding. Except this document no other document has been filed on behalf of Defendant. Plaintiff in

support of his claim filed various documents. Trial court after considering the submissions and pleadings of the parties has recorded a finding that

on 16.8.1989, patta regarding plot No. 977 measuring about 52 kari has been cancelled, therefore, this property is vested in the gaon sabha,

though it has been noted that Plaintiff has filed a revision against the said order. A survey commission was also issued. Trial court after considering

all questions has decreed the suit partly restraining Defendant to interfere in the property shown as b, c, ex-1 and ex-2.

6. Plaintiff aggrieved by aforesaid judgment and decree filed an appeal. The Appellate Court after considering evidence on record has come to

conclusion that as courts below on the basis of Commissioner's report and map submitted by him as 15ka-2, property shown as b,c, ex-1 and ex-

2 land has been accepted the possession of Plaintiff-Respondent but certain construction raised, it has not been accepted by the trial court. On

behalf of Plaintiff survey map 93 ka-2 and 109 k-2 relating to the arazi No. 302 has been shown as house of Plaintiff. A finding has been recorded

by Appellate Court that from oral and documentary evidence it clearly appears that Plaintiff is the owner in possession of Arazi No. 977 new No.

302 measuring about 052 kari, though Defendant has denied patta in favour of Plaintiff. A finding has also been recorded that khaprail house is

situated at arazi No. 977 measuring 052 kari, Defendant has failed to prove his ownership on the said plot.

7. In such circumstances, after recording such finding Appellate Court has allowed the appeal vide its judgment and order dated 11.2.2011 but as

regards claim, in view of the map of Advocate Commissioner 15 ka-2, "Pakka house", "Jina" and "Chara-machine" relief claimed by Plaintiff has

been rejected.

8. Learned Counsel for Appellant has submitted that trial court has recorded a finding that house and "Chara-machine" is in existence which is of

Plot No. 977 new No. 302 but Appellate Court has reversed the said finding without any evidence on record and, therefore, wrongly allowed the

appeal.

9. I have considered the submissions of the Appellant and perused the record.

10. On the basis of Commissioner's report and other documents, Plaintiff is able to prove that he is the owner in possession on the basis of patta

granted in his favour of the plot in dispute. Defendant though has submitted that from the date of his father's death, he is in possession of the

property and this property was given to him by zamindari and u/s 9 it has been settled but no document has been submitted except the averment.

Therefore, trial court as well as the Appellate Court has considered the issue and has recorded a finding on the basis of evidence on record.

11. In view of aforesaid facts and circumstances, I see no justification to interfere as there is no substantial question of law involved in the present

appeal, therefore, the appeal is hereby dismissed.

12. No order as to costs.