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**(1958) 02 AHC CK 0038**  
**In the Allahabad High Court**  
**Case No : Sp. A. No. 3 and 4 of 1953**

Achchaibar and another

APPELLANT

Vs

Mst: Jageshara died and after her- Kalika Prasad

RESPONDENT

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**Date of Decision :** 12-02-1958

**Acts Referred:**

**Citation :** (1958) 28 AWR 459

**Hon'ble Judges :** Roy, J;Gurtu, J

**Bench :** Division Bench

**Advocate :** Sri Man Singh, for the Appellant; Sri J. Swarup, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Gurtu, J.—In these two appeals the Plaintiffs filed two suits for redemption of usufructuary mortgages of proprietary plots. They claimed the benefit of the UP Debt Redemption Act as agriculturists in both the suits. The learned Munsif held that the Plaintiffs were not "agriculturists" within the meaning of the UP Debt Redemption Act and the suit was decreed on that basis.

2. Upon appeal the court below held that the Plaintiffs were "agriculturists" under the UP Debt Redemption Act and varied the decree of the trial court decreeing the Plaintiff's suit on the latter basis.

3. There was an appeal to this Court and in appeal the learned Single Judge held that the Plaintiffs were "not agriculturists" and he restored the decree of the trial court.

4. The question raised in this appeal therefore is whether the Plaintiffs in each case, who are "plot proprietors", are agriculturists or not.

5. It is contended on behalf of the Plaintiffs that they were agriculturists. In order to deal with this contention it is necessary to quote S. 2(1) and (3) of the UP Debt Redemption Act 1940 (omitting the explanation 1 and 2 to sub/S. 3 which is not necessary for the purpose of this case). It runs as follows:

(1) Subject to the provisions of the following Sub-sections, all words and expressions which are defined or explained in the UP Land Revenue Act of 1901, the UP Tenancy Act, 1939, shall have the meaning assigned to them therein:

(2).....

(3) "Agriculturist" means a proprietor of a mahal or of a share in or portion of a mahal or a tenant;

6. Provided that no such proprietor or tenant shall be deemed to be an agriculturist if-

(a) the aggregate of the rent, if any, and of ten times the local rate, if any, payable by him exceeds one thousand rupees, or

(b) he is assessed to income tax under the Indian Income tax Act, 1922, or under the income tax law of an Indian State:

Provided further that no person shall be deemed to be a proprietor or tenant merely by reason of his having acquired proprietary or tenancy rights, otherwise than by inheritance or survivorship, after 1-6-1940." The word "Mahal" used in the above section has been defined in the UP Land Revenue Act (Act No. III of 1901) as (a) any local area held under a separate engagement for the payment of the land revenue; Provided that

(i) if such area consists of a single village or portion of a village a separate record of rights has been framed for such village or portion; (ii) if such area consists of two or more villages, or portions of village, separate record of rights has been framed either for the entire area, or for each of the villages or portions of villages included therein; (b) any revenue free area for which a separate record of rights has been framed; (c) for such purposes as the Local Govt, may determine, any grant of land made heretofore "Or hereafter under the waste land rules ; and (d) on other local area which the Local Govt, may by general or special order declare to be mahal.

7. The word "Tenant" has been defined in the UP Tenancy Act, 1939, in S. 2 (23) to mean-

the person by whom rent is, or but for a contract express or implied would be payable and, except when the contrary intention appears, includes a sub-tenant but does not include a mortgagee of proprietary or under proprietary rights, a grove holder, a rent free grantee, a grantee at a favourable rate of rent or, except as otherwise expressly provided by this Act, an under proprietor, a permanent lessee of a thekadar " The word "proprietor" has not been defined in the Land Revenue Act, nor has the word "plot proprietor" been defined. But U/S 65 of the Land Revenue Act in the case of Mahals other than talukdari mahals the settlement for payment of land revenue is made with the proprietor of a mahal or where there are more proprietors, with the lambardars unless for special reasons the Settlement Officer decides to make the settlement with all the

proprietors.

8. U/S 31 of the Land Revenue Act the Collector has to prepare and maintain registers of revenue paying and revenue free mahals and U/S 32 thereof he has to keep a record of rights in the mahals. The records of rights include the following register:

(a) a register of all the proprietors in the mahal including the proprietors of specific areas specifying the nature and extent of the interest of each. This register is known as the khewat. The proprietors of specific areas may have khewats to themselves or be included in the common khewat of the mahal. This register is of proprietary rights and not of possession. It is only when no true owner is disclosed that possession is taken as proof of title and on that basis the name of the person in possession is entered.

9. The tenants are entered in the khataunis by S. 55 of the Land Revenue Act.

10. In this case it is admitted that the plots of which the Plaintiffs are proprietors are situate within the geographical limits of a "mahal" the revenue of which is settled with the cosharers thereof. It is admitted that the Plaintiffs are not one of those persons with whom the revenue of the mahal is settled. It is also admitted that the Plaintiffs pay no land revenue in respect of the plots of which they are plot proprietors either directly to the state or indirectly by virtue of an arrangement with the other cosharers and through them. It is also admitted that they pay no rent to the cosharers. It is further admitted that they have no share in the waste land or in the profits of the mahal or any voice in its general management. The question is whether in view of this they can be said to be "agriculturists within the meaning of R. 2, sub-R. 3 of the Debt Redemption Act.

11. How a plot proprietorship comes into existence may be gathered from the Land Records Manual. Cl. 178 of the Land Records Manual sets out how mutation is to be affected not in respect of a share but in respect of a specific area. Cl. 178 runs as follows:

178 (i) where mutation has been ordered, not in respect of a share but in respect of a specific area, the proprietor of such area shall be shown separately from the main body of cosharers, in a sub-khata, under the heading haqiyat mutfariqa (miscellaneous property), below the principal khewat khata, the sub khata being given a fractional number e.g., 30/1, if the number of the principal khata is 30.

(ii) If some only and not all of the cosharers in the main body of proprietors are responsible for the transfer of a specific area, the sub-khata relating to such area under the heading haqiyat mutfariqa should indicate the particular share or shares from which it has been carved out by the use of some such words in column No. 1 as "fulan fulan ke hissa se."

(iii) If a proprietor when parting with his entire share in khewat khata has reserved the ownership of only specific plots such as "sir" etc. he should be removed from the main body of cosharers (the transferee having stepped into his

shoes) and shown in the khewat merely as a proprietor of the specific area reserved.

(iv) When two plots belonging to two different pattis or khewat have been exchanged by the proprietors, who at the time of the mutation have intimated their desire not to be recorded as proprietors of specific areas in each others patti or khewat khata but to have the transferred area of one patti included in the other (the land revenue of the two pattis remaining unaltered, the exchange should be given effect to in the records only by a change of plots in the khatauni, and by making necessary adjustments in the areas of the two pattis in the khatauni as well as in the khewat, where the areas of the exchanged plots are not equal.

(v) The area and land revenue of each sub-khata under "haqiyat mutfariqa" should be clearly specified, recourse being had to the provisions of S. 103 of the Land Revenue Act, for the apportionment of land revenue, where necessary. If the land revenue of a sub-khata remains included in that of the principal khata by an agreement between the parties, a reference to this effect should be given in the column of revenue against that sub-khata.

12. It would appear that plot proprietorship came into existence in one of several ways. In some cases it came into existence where some of the several cosharers in the main body of proprietors transferred a specific area or when a proprietor parted with his entire share in the khewat khata but had reserved the ownership of only specific plots such as sir or where there was an exchange of plots between two pattis or khata-khewats. The proprietors of such separate plots have, according to the Land Record Manual, to be put in a separate special khata under haqiyat mutfariqa and recourse has to be had to the provisions of S. 103 of the Land Revenue Act for the apportionment of the land revenue, where necessary. S. 103 of the Land Revenue Act states:

If during the currency of a settlement the proprietary possession of any specific area other than a definite share in a mahal is transferred, the Collector may determine the proportion of the revenue payable thereon." Thus where the vendor transfers a specific area then the vendee may have the revenue assessed thereon. But the determination of such revenue does not affect the settlement made and the persons with whom the settlement has been made initially are themselves responsible for the payment of the revenue. S. 103 aforesaid puts a "definite share" in a mahal on a separate footing to a "specific area" transferred.

13. In this case there has been no fixation of revenue at all so far as these proprietary plots of the Plaintiffs are concerned. The Plaintiffs as plot proprietors therefore pay neither the land revenue, nor do they pay any rent any it is admitted that they are not liable to cess neither the proviso to Sub-Section 3 of S. 2 of the Debt Redemption Act suggests that liability to cess may be one of the test of proprietorship within the meaning of that Sub-section.

14. The question is what is the meaning to be attached to the word "proprietor of

a mahal or of a share in or a portion of a mahal" used in S. 2 Sub-Section 3 of UP Debt Redemption Act Firstly, what does proprietorship mean in that context. Necessarily, proprietorship means that the person who claims to be a proprietor must have all the rights and must suffer all the obligations that a proprietor of a mahal suffers. The proprietor of a mahal has the right to continue to enjoy his share of the profits of the mahal during the currency of the settlement. He is an owner subordinate to the State in which theoretically all land vested at the relevant time. The proprietors had a right to share in the waste land and a voice in the general administration of the State (Mahal). They had the obligation to by(sic) the land revenue and to pay cesses which are payable by those who are paying land revenue (See UP Local Rates Act 1914, Sub-section (5)). When there was a default in payment of land revenue they or their property had to suffer the consequences of the default in accordance with law. The proprietary right therefore carried with it rights as well as obligations. A tenancy right likewise carried with it rights and obligations. A plot proprietorship carries with it neither the rights nor obligations of a tenant and it does not carry with it most of the obligations of a proprietor nor most of the rights of the proprietor. No doubt the plot proprietor is regarded as a malik maqbuza and the proprietors of the mahal cannot turn him out. His position is not that of a tenant but is much stronger. He cannot however claim any of the proprietary rights which a proprietor has in the mahal and which have been indicated above.

15. It appears from a perusal of Baden Powell's Land Tenure and Land Systems of British India, 1892 Edition that the term "malik maqbuza" (proprietor of a plot) is used in regard to person having full right in his own holding but who has lost or never had any share in the profits of the entire village or state. Sometimes it appears that tenants who had been long in occupation but who were not founders of the village but had obtained strong prescriptive rights were recognised as malik qabiz or malik maqbuza in various parts of the country. In relation to the Punjab the position of malik qabiz or malik maqbuza is discussed in volume II, pages 641, 651 and 671 and with reference to the CP at pages 387 and 388 in volume II of Baden Powell.

16. It seems to us, therefore, that a plot proprietor cannot be considered to be in the main body of proprietors, and although he has the rights of a proprietor in the sense that he cannot be treated like a tenant, he is not a proprietor of a mahal or of a share in or of a portion of a mahal. He has no definite share in the whole or a part or a portion of a Mahal. He does not share in the profits at all either of the whole mahal or of a share of the mahal or of a portion of the mahal. His is not case of sharing at all but only of rights in the plots, solely held, though there is a liability for the proportionate land revenue to be fixed on him until such land revenue is fixed there is not even a liability to pay land revenue to the state indirectly through the persons with whom the mahal has been settled. The Land Revenue Manual shows that the area of land in the possession of the plot proprietor is to be under a sub-khata and is in nature of haqiyat mutjariqa (a miscellaneous right) not a full proprietary right.

17. S. 2 (3) of the Debt Redemption Act by its definition makes a proprietor of a mahal or of a share in a mahal or a portion of the mahal or a tenant an agriculturist to whom the benefit of the Debt Redemption Act applies. In order that a person may be deemed to be an agriculturist to whom that Act applies he must fall into the category of either a proprietor or a tenant. There is no question of tenancy here and in our view a proprietor cannot be deemed to be a proprietor within the meaning of the Act unless he has all the rights and all the liabilities, which are attached to proprietorship of a mahal, attached to him. If he occupies an intermediary position between a tenant and a landlord, he may be an agriculturist in the popular sense of the word but he would not be an agriculturist in the technical sense of the word. It is not necessary to enter into the meaning of the words, "portion of a mahal" because first a person must attract to himself the full incidences of proprietorship before the question of whether he is proprietor of the whole or a proprietor of the part or proprietor of a portion would arise, but it is obvious that a portion of mahal really refers to pattis. Sometimes a mahal is sub-divided into pattis and persons who are cosharers in the patti are proprietors of a portion of a mahal.

18. The words whole or part moreover present no difficulty.

19. We are, therefore, in agreement with the view of the learned Single Judge that a plot proprietor is not a proprietor within the meaning of S. 2, Sub-section (3) of the UP Debt Redemption Act and therefore he cannot be said to be an agriculturist entitled to its benefit.

20. No other point has been raised and we accordingly dismiss these appeals with costs.