

(1965) 08 AHC CK 0001
In the Allahabad High Court
Case No : S.C.A. No. 170 of 1958

Badal and Another

APPELLANT

Vs

Khadim Hussain and Others

RESPONDENT

Date of Decision : 09-08-1965

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 14, 209

Citation : (1965) 35 AWR 752

Hon'ble Judges : Lakshmi Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lakshmi Prasad, J.—This is a Defendants' second appeal arising out of a suit for injunction with an alternative prayer for possession.

2. It is unnecessary to enter into the facts of the case since the point that has been urged before me in second appeal is a very short one and that relates to the question of limitation. The suit was filed u/s 14 read with Section 209 of the U.P. Zamindari Abolition and Land Reforms Act on 5th April, 1955. Among other grounds it was contested on the plea that the claim was barred by limitation. The trial court found the issue on the question of limitation in favour of the Plaintiff but dismissed the suit on the basis of finding on other issues which it recorded against the Plaintiff. The first appellate court, on appeal by the Plaintiff, came to a contrary conclusion on issues other than that relating to the question of limitation and decreed the claim without recording any specific finding on the plea of limitation. Hence the Defendants have come up in second appeal.

3. I have heard the learned Counsel for the parties at some length. It is not in dispute that under Appendix III to Rule 338 of the Rules under the U.P. Zamindari Abolition and Land Reforms Act, as it then stood, this suit should have been filed within two years. The dispute centers round the question as to with effect from what date the aforesaid period of two years is to be computed. The

contention of the Appellants" learned Counsel is that it is to be computed with effect from the date of vesting, namely, 1st July, 1952 whereas the contention of the other side is that it is to be computed with effect from 1st of July following the date of serial No. 30 in Appendix II referred to above. For the sake of convenience it may be reproduced below:

Suit for ejectment of a person taking or retaining possession of the land unlawfully and for damages:

(i) if the person was in possession of the land on the date of vesting and the period of limitation for his ejectment specified in the U.P. Tenancy Act, 1939, had not expired; (ii) in case of occupant referred to in Section 144; (iii) in any other case.

The dispute raised before me boils down to this, namely whether the present suit falls under Clause (i) or under Clause (iii) reproduced above. Learned Counsel for the Appellants argues that Clause (i) must apply whenever it is found that the person sought to be ejected was in possession on the date of vesting and Clause (iii) can be invoked only in cases which do not fall under Clause (i). So far as the latter part of the argument is concerned, there can perhaps be no dispute with it, but I find it difficult to accept his former part of the argument. As I read Clause (i) I find that it is meant not to cover cases of all such persons who were in possession on the date of vesting but only those of such of them who were in possession on the date of vesting and against whom the period of limitation had not expired under the U.P. Tenancy Act, which, in other words, means that it covers only cases of such persons who were in possession on the date of vesting and against whom cause of action for ejectment existed even prior to the date of vesting. In that view of the matter it necessarily followed that cases of such persons, in possession on the date of vesting, which do not fall within Clause (i) and are also not covered by Clause (ii) must necessarily fall under the residuary clause, namely Clause (iii). Hence I am of Opinion that the period of two years provided by the entry at serial No. 30 in Appendix III has to be computed in the instant case not with effect from the date of vesting but with effect from 1st July following the date of occupation, which in the instant case will be taken to be the date of vesting because it is with effect from that date that according to the provisions of Section 14 of the

Two Years From the date of vesting

Two Years From the date of declaration u/s 144.

Two Years From 1st of July following the date of occupation."

U.P. Zamindari Abolition and Land Reforms Act the possession of the Defendants became unlawful or in other words the Plaintiff became entitled to get back possession. On that basis, obviously, the suit filed on 5th April, 1955, was well within time.

4. No other point has been urged. The appeal is dismissed with costs.