
(1972) 08 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Second Appeal No. 65 of 1971

Badri Nath

APPELLANT

Vs

Wazir Ram Saran

RESPONDENT

Date of Decision : 14-08-1972

Acts Referred:

Jammu and Kashmir Big Landed Estates Abolition Act, 2007 — Section 4, 5

Citation : AIR 1973 J&K 62

Hon'ble Judges : Mian Jalal-ud-din, J;Bakhshi Ishwar Singh, J

Bench : Division Bench

Advocate : R. P. Sethi, for the Appellant; Avtar Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mian Jalal-ud-din, J.—This is the defendant's second appeal and arises out of a suit for possession of the land measuring 7 marlas

comprising Khasra No. 90 situate in village Rator Dhok and for mesne profits. The suit was tried by the Sub Registrar, Munsiff Jammu who

decreed the suit and also awarded Rs. 90.00 as mesne profits in favour of the plaintiff. On appeal the District Judge Jammu affirmed the judgment

and decree of the trial court. Aggrieved by this order the defendant has come up in further appeal before this court.

2. It is appropriate to recount the facts of this case. The plaintiff alleged that he is the owner of the land in dispute and the same was in his

possession. About three years ago the defendant took forcible possession of the land. He has therefore, prayed for recovery of possession and has

also charged Rs. 90.00 as mesne profits at the rate of Rs. 30.00 per year. The defendant denied that the plaintiff was the owner of the suit land or

that he had been in possession of the same.

3. Proceedings in the case, however, reveal that the plaintiff was no doubt the owner of the suit land before the Big Landed Estates Abolition Act

came into force. After the Act came into force he could retain only 182 kanals in his possession as owner. Document Ex. P. W. 1 shows that the

Plaintiff while exercising his choice did not claim the suit land. Thus by virtue of Section 4 of the Big Landed Estates Abolition Act the proprietary

right of the plaintiff in the suit land extinguished. No changes in the column of Girdawari were made subsequent to it and the plaintiff is shown to be

in occupation of the land as 'owner' through Kirpu who was in cultivating possession of the same. The land it appears, was not mutated in the name

of this Kirpu under the Big Landed Estates Abolition Act. But according to the revenue record Kirpu is shown to be in possession of the land in

dispute from the year 2004 Bikrimi to 2016 Bikrimi. It is, however, admitted by Kirpu in his statement that the plaintiff forcibly took possession of

the land in dispute in between these years. Thereafter the appellant occupied the land and this furnished a cause of action to the plaintiff to bring the

present suit.

4. Both the courts below have recorded a finding on issue No. 1 in favour of the plaintiff that he is the owner of the property, but we cannot

subscribe to this view in as much as by virtue of Section 4 of the Big Landed Estates Abolition Act the proprietary rights of the plaintiff in the suit

land have extinguished. He can no longer be said to be the owner of the land. It was for the Revenue authorities to see thereafter as to whether the

said land should be mutated in the name of Kirpu who was in cultivating possession of the land or the same should go to the State by escheat. But

uptill now this has not been done and the entries in Revenue papers are as before. The factual position that has emerged in the case is that the

plaintiff continued to remain in occupation of the suit property as trespasser after the operation of Section 5 of the Big Landed Estates Abolition

Act and the present defendant appellant occupied the land without any right. The position of the defendant is, therefore no longer better than that of

the plaintiff as he has got no right to the property but has entered upon the land as trespasser. According to the revenue record Kirpu is shown to

be in possession of the land in dispute from the year 2004 to 2016 Bikrimi. In the year 1962 the plaintiff is shown to be in the cultivating

possession of the land. In our opinion the plaintiff respondent though not having title in the property had of course the possessory right on the basis

of which he could maintain the suit for recovery of possession. There was no bar to it. In our view we are fortified by an authority of Patna High

Court reported as Srinath Singh and Another Vs. Kali Bhawani Prasad and Another, where a Division Bench of the court observed that if in a suit

for recovery of possession both the plaintiff and the defendant have got no title to the suit property i. e. if both are trespassers in the suit land the

plaintiff who is a prior trespasser is entitled to possession against the subsequent trespasser to dispossess the former on the strength of the previous

possession. The previous possession of a person in respect of property has got to be protected in course of law against the whole world except

the true owner.

5. Again in Somnath Burman Vs. Dr. S.P. Raju and Another, at p. 849 their Lordships of Supreme Court while deciding an appeal relating to the

suit for possession expressed the view that the possession of the plaintiff is a good title against all but the true owner. The defendants who were

mere trespassers could not defeat the plaintiff's lawful possession by ousting him from the suit property. Possessory title is good title against

anybody other than the lawful owner. Their Lordships quoted with approval the observations made in (1913) 20 Ind App. 99 (PC) where the

Judicial Committee laid down the law that a person having possessory title can get a declaration that he was the owner of the land in dispute: The

possession of the plaintiff was sufficient evidence of title as owner against the defendant.

6. In view of these settled propositions of law it is hardly open to the defendant who is a mere trespasser having no better title than the plaintiff to

defeat the possessory right of the plaintiff.

7. The result is that although the plaintiff is not found to be the owner of the property as he would be deemed to have been expropriated from land

in dispute under Sec. 4 of the Big Landed Estates Abolition Act, nevertheless he can claim the recovery of the suit land on the basis of his

possessory right and this possessory right is sufficient evidence of the plaintiff's right to recover the land as against the defendant.

8. For the foregoing reasons there is, therefore, no force in this appeal which is

hereby dismissed. But in the view of the legal questions involved in the case the parties are left to bear their own costs.