

(1934) 04 AHC CK 0024
In the Allahabad High Court

Dhania Kuer and Others

APPELLANT

Vs

Jai Jai Ram and Others

RESPONDENT

Date of Decision : 18-04-1934

Acts Referred:

Citation : AIR 1934 All 823

Final Decision : Dismissed

Judgement

1. This is a plaintiff's appeal arising out of a suit for joint possession of certain plots. The plaintiffs are the inferior proprietors or under-proprietors of the plots and so are the defendants. Neither the tenants nor the superior proprietors are parties to this litigation. The defendants-first-party, for consideration, obtained possession of these plots which were in the hands of a tenant, Mt. Sundari, purporting to purchase it. They remained in peaceful occupation for 3 or 4 years when the present suit was brought for joint possession. The Courts below have dismissed the claim holding that the defendants have acquired sir rights in these plots. Admittedly, on taking possession from the tenants the defendants got their names entered in the revenue papers for the year 1333 Fasli. The first point urged in appeal is that, without showing that their names were entered in the papers for 1332 Fasli, the defendants cannot claim to have acquired sir rights. u/s 4(d) all that is necessary is that the name should be recorded in the agricultural year immediately preceding the agricultural year in which the Tenancy Act came into force. This obviously means that the name should be recorded in the papers for the preceding agricultural year.

2. Now the Agra Tenancy Act came into force in September 1926. The agricultural year, as defined in Section 3(9), commences from 1st July and ends with the 30th of June following. It is therefore quite clear that the Act came into force in the agricultural year commencing from 1st July 1926 and ending with 30th June 1927. The names of the defendants were recorded in the papers for the year prior to 30th June 1926. They therefore could acquire sir rights. The next argument is that individual under-proprietors cannot acquire sir rights and

that sir rights can be acquired only by the entire co-parcenary body in the village when they happen to own a common stock and employ common servants or hired labour and when the lands are recorded as the khudkasht of the entire body. This contention., is based on the use of the word "the" before the word "landlord" in Clause (d) of Section 4. Support is sought from certain decisions of this Court on Section 79 of the old Tenancy Act, in which it appears to have been held that "land-holder" in that section meant the entire body of co-sharers. It is not necessary to consider those decisions and it is now doubtful whether those decisions would at all be applicable to the new Section 99 which corresponds to the old Section 79, because under the new section a suit can lie not only against the landholder but against any person claiming as land-holder or any person claiming through such a land-holder, which makes its scope much wider. We have to interpret Section 4(d)., Probably the reason why the definite article is used was because it was intended to emphasize that the landlord must have a proprietary interest in that very land and should not merely be a landlord in the village. It may also be that the definite article was used because in the first Clause (a) an indefinite article had been used.

3. Reading the whole section there can be no doubt whatsoever that a single proprietor of land can acquire sir rights in the khudkasht lands which he cultivated with his own stock and by his servants or hired labour and when his name was recorded in the papers. Section 4 itself refers to landlords holding specific areas in severalty, and the very definition of sir rights at the end of the section shows that it includes the right to exclusive possession of the sir against co-sharers of the sir-holder in the proprietary right subject to a liability to account for profits. This means that an individual proprietor can acquire sir rights which would give him the right to retain exclusive possession of the sir against all the other co-sharers but would make him liable to render account to them for the share of their profits. This definition of sir right would have no meaning if sir rights can be acquired and owned only by the entire body of cosharers taken together. Similarly Section 6 provides for exchange of sir between co-sharers in the mahal and would have no application if the sir can be owned by the entire body of co-sharers only. We are therefore of opinion that the proper interpretation of Section 4(d) is that land held by any landlord of the plot at the commencement of the Act, which was cultivated by him with his own stock or by his servants or hired labour and which was recorded as the khudkasht of the landlord in the previous agricultural year, would become his sir.

4. The third point urged is that an under-proprietor is not a "landlord" within the meaning of Clause (d) and can never acquire any sir rights at all. This contention has no force. Landlord is defined in Section 3(b) as meaning the proprietor of a mahal or a share of a specific plot therein. An under-proprietor is a proprietor of a share or a specific plot in the mahal. There is no reason why he should not be regarded as a proprietor and there is therefore no reason why he should not be regarded as a landlord. Indeed where there is an under-proprietor it is only he who can cultivate lands as his khudkasht; the superior proprietor would not be

able to do so if the land is in the possession of an under-proprietor. We have already noted that the defendants had been in peaceful possession of those plots for some years before the suit was brought. In our opinion the view taken by the Courts below that the plaintiffs are not entitled to joint possession of these plots was sound. The appeal fails and is dismissed with costs.