
(1935) 03 AHC CK 0016
In the Allahabad High Court

Inderjit Rai and Others

APPELLANT

Vs

Gajadhar Raj and Another

RESPONDENT

Date of Decision : 05-03-1935

Acts Referred:

Agra Tenancy Act, 1926 — Section 3(2)

Citation : AIR 1935 All 967

Hon'ble Judges : Bennet, J

Bench : Division Bench

Judgement

Bennet, J.—This is a second appeal by defendants first and second parties against a decree in favour of the plaintiffs by the lower appellate Court. The facts of this case are not in dispute. The plaintiffs and defendants second party are co-sharers" in a mahal. On 27th June 1930, the defendants second party executed a permanent lease in favour of defendants first party of four bighas odd of agricultural land, not land in the village abadi, for the purpose of building at a single premium of Rs. 1,651. The plaintiffs brought a suit without delay on 1st August 1931. In the plaint and written statement it is common ground that the land was agricultural ground previous to the lease. The plaint alleged that the land had been formerly occupied by tenants who were joint tenants of the parties, and the written statements allege that the lands had been the exclusive sir or khudkasht of defendants second party. On both these allegations the land was agricultural land. The lower appellate Court found that the land was entered for the first time as khudkasht by an order of 7th January 1930, and that the defence had failed to prove that the land had been entered as khudkasht in the year prior to Act 3 of 1926, coming into force, i.e., 1333 F., and therefore the land could not be regarded as the exclusive sir of defendants second party.

2. The lower appellate Court also held that the evidence of estoppel and acquiescence could not be accepted and that neither estoppel nor acquiescence were proved. Learned Counsel for appellants argued that as the defendants first party had been put in possession by defendants second party who were co-

sharers and the land was recorded as the khudkasht of defendants second party at the time of the lease therefore the plaintiffs could not eject the defendants first party and could not get a decree for the demolition of the constructions made by them. He based his argument on a ruling reported in *Bholanath v. M. Buskin* (1894) A.W.N. 127, where it was held that one co-sharer could not sue for possession against the lessee of other co-sharers and that such a lessee was not a trespasser. This ruling was followed in a Letters Patent Appeal No. 62 of *Pratap Ahir v. Gopi Ram* 1935 All 943, in which judgment was delivered yesterday on 4th March 1935, by a Bench of which I was a member, and in that case there was a suit against certain defendants who had been put in possession of a certain plot by co-sharers of the plaintiffs. It was held that the possession of the defendants was not that of trespassers and that the plaintiffs could not get a decree for possession against them. Now, in both these rulings the land had been let for agricultural purposes by a co-sharer who was in possession of it. A co-sharer is entitled to hold possession of land in a mahal as his sir or khudbasht. But such possession is for agricultural purposes. This is shown by the definition of "sir" in Section 4, U.P. Act 3 of 1926, which refers in all its clauses to land, and khudkasht similarly refers to land. Land is defined in Section 3(2) as

land which is let or held for agricultural purposes or as grove-land or for pasturage.... It does not include land for the time being occupied by dwelling houses or manufactories or appurtenant thereto.

3. In the present case when the lease was granted and the buildings were erected the land ceased to be land within the definition of Section 3(2), Agra Tenancy Act. One result of the land ceasing to be agricultural land is that the profits of that land can no longer be taken into account in suits u/s 226 or Section 227 of that Act. As long as the land remains agricultural land in the possession of a co-sharer a rate of rent is assessed on it in a suit for; profits and the other co-sharers get the benefit in such a suit. But when the land ceases to be agricultural land the other co-sharers are deprived of that benefit. In other words, the land in the mahal taken into account in a suit for profits has become less by the area of 4 bighas which has now been turned into building land. There is no provision in the Act by which the profits from a building lease even if an annual rent had been reserved could be taken into account in a suit for profits. "Sayar" which is defined in Section 3(4) is not defined in a way which would include the annual rent from a building lease. I consider that a co-sharer in possession of land as his sir or khudkasht which is agricultural land and not a bad is not entitled to alter the nature of that land by turning it into building land (as distinct from building appurtenant to an agricultural holding). If he turns it into building land either by building on it himself or by letting it to a tenant for the purpose of building, he is using the land in a way which is contrary to the interest of the other co-sharers in the mahal. By doing so he gives the other co-sharers a right to sue for joint possession and a right to have the building demolished. In the present case the question of sir does not arise as the Court below has held that the land is not sir. Some argument was made that the

plaintiffs could obtain some relief by suing for partition and asking that this particular 4 bighas should be placed in the share of the defendants second set. The existence of such a remedy does not in my opinion bar the plaintiffs from coming to a Civil Court in the present suit. I consider that the decree of the lower Court was a decree which was perfectly legal on the facts found and I accordingly dismiss this second appeal with costs. As the question is of some complexity permission is given for a Letters Patent appeal.