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**(1965) 02 AHC CK 0012**  
**In the Allahabad High Court**  
**Case No : Second Appeal No. 4479 of 1958**

Indraj Singh and Others

APPELLANT

Vs

Smt. Savitri Kunwar

RESPONDENT

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**Date of Decision :** 18-02-1965

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 107

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

**Citation :** AIR 1966 All 234 : (1965) 35 AWR 227

**Hon'ble Judges :** S.N. Singh, J

**Bench :** Single Bench

**Advocate :** Shanti Bhushan, for the Appellant; V.B. Gupta, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.N. Singh, J.—The plaintiff respondent claiming to be the Bhumidhar of the property in suit filed the present suit against the defendants u/s 209 of the U. P. Zamindari Abolition and Land Reforms Act and claimed Rs. 300/- as damages. The suit was contested by the defendants that the plaintiff was not the Bhumidhar, She was not entitled to sue. She had not impleaded Sri Vijai Kumar and Sri Virendra Kumar as parties to the case. The suit was further resisted on the ground that the same was barred by limitation and that the defendants were in possession with the consent of the plaintiff.

2. On the above pleas the trial Court framed several issues and remitted an issue about Bhumidhari right to the competent Civil Court. The Civil Court held that the plaintiff was the Bhumidhar of the land in suit and this finding was accepted by the Assistant Collector in this case. Having held that the plaintiff was the Bhumidhar the trial Court found that the defendants were trespassers and that the trespass started in January 1956, as such he found the suit to be within time and decreed the suit for ejectment and recovery of Rs. 300 as damages.

3. The defendants went up in appeal against this decision but the same was

affirmed by the learned Additional Civil Judge, Moradabad by this judgment dated the 24th of October 1958.

4. In appeal before me on behalf of the defendants it has been urged that the revenue Court had no jurisdiction to pass a decree for damages. The second submission was that the Courts below have wrongly held that the defendants were trespassers. As a matter of fact they were proved to be in possession with the consent of the plaintiff. The third submission of the learned counsel was that in absence of the U. P. State the suit was not maintainable.

5. So far as the first submission of the learned counsel is concerned no such plea was taken in either of the two Courts below it has been taken for the first time in this appeal. However, I have considered the arguments on this point. It is true that when the Zamindari Abolition and Land Reforms Act came into Force in the Schedule we only find that at serial No. 2-4 Section 209 is mentioned and in column No. 3 only this much was written "suit for ejectment of persons occupying land without title". With this it is argued that as there was no mention of damages at the time when the suit was instituted the suit for damages could not be filed in the revenue Court. This appears only to be a lacuna in the Schedule for we find that by an Amendment Act 37 of 1955 words "and damages" were added to this Schedule. The point for consideration is as to whether before the addition of these words "and damages" could the revenue Court grant the relief for damages or not? Since the suit u/s 209 of the U. P. Zamindari Abolition and Land Reforms Act was cognizable by the revenue Court and the section itself mentions that the plaintiff could get the relief of ejectment as well as damages against the defendants I do not think that mere non-mention of the words "and damages" would disentitle the plaintiff from getting the relief of damages from the revenue Court. The addition of the words "and damages" made subsequently is by way of abundant caution. The suit u/s 209 was within the jurisdiction of the revenue Court. In my opinion the revenue Court could grant the relief or damages as claimed. Now at this time when this point has been raised before me the revenue Court admittedly has jurisdiction to pass a decree for damages. Anomalous result would follow if today I direct that the plaintiff may file a suit for the recovery of damages. The result would be that the plaintiff would go to the same Court for the same relief which she has already got. I do not think that even accepting the submission of the learned counsel any useful purpose will be served. Courts are meant to do substantial justice and not to put complications in the way of a suitor. In my opinion the Courts below have rightly granted the relief of damages in this case.

6. So far as the question of consent is concerned it is a pure question of fact whether a person is in possession with or without the consent and after considering the evidence of both the parties the Courts below have come to the finding that the defendants were in possession with the consent of the plaintiff. This finding could not be interfered with.

7. Now coming to the last question raised by the learned counsel that U. P. State

was a necessary party this has to be remembered that when the Zamindari Abolition and Land Reforms Act was originally passed there was no such provision as making it incumbent on the plaintiff while filing a suit u/s 209 of the U. P. Zamindari Abolition and Land Reforms Act to make the U. P. State a party to such a suit.

8. It was in the year 1962 that by Section 9 of Act 21 of 1962 U. P. State was made a necessary party to a suit u/s 209 of the said Act. The point for consideration in this appeal is as to what is the effect of this amendment on Section 209. Ordinarily an amendment in procedural law is retrospective unless the giving of its effect would prejudice the rights established under the old law. In Maxwell on Interpretation of Statutes 1962 edition at page 217 it has been stated "the general principle however seems to be that alterations in procedure are retrospective unless there be some good reason against it." Then at page 219 we find stated as follows: "But a new procedure would be presumably inapplicable where its application would prejudice rights established under the old law or would involve a breach of faith between the parties" in the case of Chuni Lal Sowcar v. Srinivas Rao AIR 1946 Mad 262 the petitioner gave the requisite notice but before the date of hearing the rule as to notice was amended. The petitioner could not be compelled once more to give notice of some new date for hearing and incur all the consequent expenses and the amended rule was accordingly held to be not retrospective.

9. The validity or operation of any order validly passed or any act validly done by a Judicial Tribunal under the procedural law for the time being enforced cannot be affected by any subsequent change in the said law. It was held by a Full Bench of the East Punjab High Court in the case of Ram Singh v. The Crown AIR 1950 EP 25 that "it is well settled that no one has a vested right in any procedural rule and that, therefore, any change in the procedural law has a retrospective effect in the sense of being applicable even to judicial proceedings initiated before the change, provided of course this can be done without affecting any substantive rights acquired by any of the parties to the proceedings before the change. It is, however, equally well settled that the validity or operation of any order validly passed or any act validly done by a judicial Tribunal under the procedural law for the time being enforced cannot be affected by any subsequent change in the said law."

10. Thus it is clear that although procedural law is generally retrospective but if enforcement of such an amendment affects the validity of a judicial order validly passed it cannot be retrospectively given effect to. In such cases we have also to look to the stage at which the particular case has reached. If a suit is in its initial stages and pending before the trial Court and at that time there is a change in the procedure the changed procedure should be followed for it would not affect the right of any person at that stage, but if a party has already obtained certain right under a decree it would be very unfair to disturb that right and direct the suitor to start afresh from the trial stage for no fault of his. A distinction has to

be made between a suit and an appeal at the time when the amending Act of 1962 was passed. It was made obligatory to implead U. P. State as a party to the suit. It would not necessarily follow that U. P. State was a necessary party to the appeal as well, although at the time when the suit was instituted U. P. State was not a necessary party. In this respect it will be help full to notice the case of Mahmud Husain Khan Vs. Radha Kishun, wherein a distinction has been made between a suit and an appeal, and in that case it was held that Section 296 of the U. P. Tenancy Act applied to only suits and execution applications and not to appeals.

11. To sum up my view is that when a suit u/s 209 is pending before the trial Court at the time when the amendment of 1962 was passed it is desirable that U. P. State be impleaded as a party to the suit under the direction of the Court, but at the time when this amending Act was passed if a suit has reached the appellate stage it is not at all necessary to direct the implement of U. P. State to the prejudice of the successful party. To set aside a validly obtained decree for impleading U. P. State is against all canons of justice and in my view is not warranted by the provisions of law as discussed above.

12. In view of the above I find no force in this appeal which is accordingly dismissed with costs.