
(1924) 05 AHC CK 0002
In the Allahabad High Court

Kallu and Others

APPELLANT

Vs

Ganga Ram and Another

RESPONDENT

Date of Decision : 09-05-1924

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 20, 20(2)

Citation : AIR 1924 All 825 : 84 Ind. Cas. 669

Hon'ble Judges : Neave, J

Bench : Single Bench

Judgement

Neave, J.—The facts in this case may be briefly Stated. Daya Ram had two brothers, Ram Kishen and Net Ram. The plaintiffs are the Sons of Ram Kishen and the defendants the sons of Net Ram at has been found as a fact by the Court below that Daya Ram and his nephews were occupancy tenants his possession of a joint holding, though for convenience they cultivated different portions of it separately. Daya Ram is dead. He made a Will under which he bequeathed his share of the holding to the defendants. The plaintiffs brought this suit if or a declaration that the Will of Daya Ram was invalid so far as his occupancy holding was concerned. Both the Courts below have dismissed the suit, the lower Appellate Court holding that the Will operates as a transfer of the holding as was made in favour of a person who was a co-sharer in the holding at the time of its execution.

2. Two points have been argued in this appeal the first; that an occupancy tenant cannot regulate the: succession to his tenancy by making a Will, and second that a Will does not come within the meaning bf the word "transfer" in Section 20 of the Tenancy Act.

. 3. Section 20, Clause 2 of the Tenancy Act provides "that the interest of occupancy tenants is not transferable otherwise than by voluntary transfer between persons in favour of whom as co-shares in the tenancy such right originally arose or who have become by succession co-sharers therein." Section 22 of the same Act provides that ivhefn an occupanby tenant dies, his interest in

the holding shall devolve as follows: (e) failing such daughter's son, on the nearest collateral male relative in the male line of descent provided that no such daughter's son Or collected relative shall be entitled to inherit who did not share in the cultivation of the holding at the time of the tenant's death.

4. It is contended on behalf of the appellants that the word "transfer" in Section 20 of the Tenancy Act must bear the same meaning as in Section 5 of the Transfer of Property Act and be confined to a transfer within the meaning of that section. This would exclude an alienation by Will. This proposition finds some support from the language of Section 22 in which the word "shall" would seem to exclude the right of an occupancy tenant to vary the order of succession prescribed in that section. In my opinion the view put forward on behalf of the appellants is the correct one. As it has been found that they were joint in cultivation with Daya Ram and are, equally with the defendants, his nearest collateral male relatives in the male line of descent. I hold that they are entitled to the declaration for which they asked.

5. The appeal is, accordingly, allowed with costs in all Courts including in this Court fees on the higher scale and the appellants are granted a declaration that the Will in suit is invalid so far as the occupancy of Daya Ram is concerned.