

(1923) 04 AHC CK 0008
In the Allahabad High Court
Case No : S.A. No. 78 of 1922

Muneshur Tewari

APPELLANT

Vs

Mt. Mahasha. Kuri and others

RESPONDENT

Date of Decision : 29-04-1923

Acts Referred:

Citation : (1923) 04 AHC CK 0008

Judgement

Daniels, J.—This is an appeal by the plaintiff in a suit for ejectment under S. 63 of the Tenancy Act. The plaintiff is alone entitled to collect the entire rent from the tenants. This has been clearly found by the learned District Judge. The learned District Judge however, was of opinion that though the plaintiff was entitled to the entire rent he was not entitled to eject the defendant without the concurrence of the entire body of co-sharers. It is hardly necessary to point out that this view if correct would be productive of great inconveniences, especially in the eastern districts where co-sharers are often very numerous. The learned District Judge gives two reasons in support of his decision. The first is that S. 194 only makes an exception in the case of money suits, and the other that the word "landholder" does not; occur in S. 58 of the Tenancy Act. The reference to S. 194 is doubtless to" sub-section (3). This sub-section however only applies where one of two or more co-sharers is not entitled to sue alone which is the whole point in dispute in this case. It is quite true, as the learned District Judge says, that S. 58 does not contain the word "landholder." There is no reason why it should as it only specifies the grounds of ejectment. The operative section under which the tenant is ejected is S. 63, and the very opening words of this section are "when a landholder desires to eject a tenant." "Landholder" is defined in S. 4 (5) as the person to whom rent is payable, and it is in my opinion clear law that the co-sharer who is entitled to collect the entire rent of a particular tenant is also entitled to eject him. He is the landholder for the purposes of the act. This view was also taken by the Board of Revenue in Select Decision No. 2 of 1910, a decision which has been followed in many subsequent cases. I am told by Mr. Agarwala that this decision has recently been dissented from by the present

junior member in a ruling which has not yet been reported. However that may be, it is in my opinion good law. It was finally urged by Mr. Agarwala for the respondents that the District Judge's decision does not cover all the pleas which were urged before him. I have accordingly been through the grounds of appeal with the counsel and it is found that the only plea that can be said to be not covered by the judgment is that contained in paragraph 6 of the memorandum of appeal. In that the defendant urged that he had acquired occupancy rights. This point is not covered either directly or by implication in the judgment of the Court below and the learned Judge does not say that it was not urged before him. I accordingly remit an issue under order 41 rule 25 to the lower appellate Court:

Has Mt. Murta Kuer the defendant acquired occupancy rights in the land in suit?

2. On receipt of the finding, which should be submitted by 30th June, ten days will be allowed for objections. The finding will be decided on the evidence already on the record.