

(1971) 12 AHC CK 0026
In the Allahabad High Court
Case No : Special Appeal No. 509 of 1963

Nanhoo

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 07-12-1971

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202

Citation : AIR 1972 All 433 : (1972) 42 AWR 27

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Advocate : Lalta Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This appeal has been filed by the defendant to a suit for ejectment u/s 202 (f) of the U. P. Zamindari Abolition and Land Reforms Act. Smt. Beti Kunwar and Pratap Bhan Singh, the respondents instituted the suit on the ground that the defendant appellant was the Asami of the land in dispute and that the plaintiffs proposed to bring the land under their personal cultivation. The appellant contested the suit. He urged that the suit was barred by time because Pratap Bhan Singh, one of the plaintiffs, became a major and consequently his disability determined, more than three years prior to the suit. The trial Court accepted the defence and dismissed the suit. This decision was upheld in appeal. The plaintiffs went up to the Board of Revenue in second appeal and succeeded. The Board set aside the decrees of the authorities below and decreed the suit. The appellant then instituted a writ petition which failed. Hence the present appeal.

2. There is no dispute between the parties that on the date of vesting the appellant became an Asami under the Zamindari Abolition and Land Reforms Act. The plaintiffs relied upon Sub-clause (ii) of Clause (f) of Section 202 of the Act. If that clause were applicable, the suit will be within time. This provision reads:--

"202. Procedure of ejectment of Asami.-- Without prejudice to the provisions of Section 338, an asami shall be liable to ejectment from his holding on the suit of the Gaon Sabha or the landholder, as the case may be, on the ground or grounds--

(a) mentioned in Sections 167, 191 or 206;

(b) that he-

(i).....;

(ii)

(c)

(d)

(e)

(f) that he belongs to the class mentioned in Clause (h) of Sub-section (1) of Section 21 or Clause (b) of Section 133 and that-

(i) the land-holder wishes to bring the land under his personal cultivation and in cases where the lease is for a fixed term such term has expired, or

(ii) the disability has determined;

(g).....

(h) ;"

3. Clause (f) of Section 202 applies, inter alia, to an Asami who belongs to the class mentioned in Clause (h) of Sub-section (1) of Section 21. Such an Asami is liable to be ejected on the suit of the land-holder, when the disability of the land-holder is determined.

4. The contention on behalf of the defendant-appellant is that the moment one of the land-holders became a major, his disability as a minor determined. As soon as the disability determined, the landholder became entitled to institute a suit for ejectment under Clause (f) (ii) of Section 202. For such a suit the relevant rule prescribed a period of limitation of three years. On the expiry of three year's period, the Asami became a sirdar u/s 204. In the present case, it was admitted between the parties that Pratap Bhan Singh became major more than three years prior to the institution of the present suit. In this situation, it was urged that the appellant having become sirdar could not be ejected u/s 202.

5. Section 21 provides for non-occupancy tenants, sub-tenants of grove lands and tenant's mortgagees to be asamis and it provides:--

"(I) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as-

(a)

- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(h) a tenant of Sir land referred to in Sub-clause (a) of Clause (i) of the Explanation u/s 16, a sub-tenant referred to in Sub-clause (ii) of Clause (a) of Section 20 or an occupant referred to in Sub-clause (i) of Clause (b) of the said section where the land-holder or if there are more than one land-holder, all of them were person or persons belonging-

(a) if the land was let out or occupied prior to the ninth day of April, 1943, both on the date of letting or occupation, as the case may be, and on the ninth day of April, 1946; and

(b) if the land was let out or occupied on or after the ninth day of April, 1946 on the date of letting or occupation to any one or more of the classes mentioned in Sub-section (1) of Section 157.

(i) shall be deemed to be asami thereof." This provision expressly provides that persons of the mentioned categories become Asamis provided the land-holder, and in a case where there are more than one land-holder, all of them, were disabled persons on the relevant dates. Thus it is the disability of each and every one of the landholders that brings about the status of Asami, In this context if the legislature intended that the cause of action for a suit to eject such an Asami will accrue on the determination of disability of any one of the land-holders, a similar express provision would have been made in Clause (f).

6. Sub-clause (ii) of Clause (f) of Section 202 refers to the determination of the disability of the land-holder. Each co-sharer is not the land-holder; all of them together constitute the land-holder. If there are more than one person constituting the land-holder then unless the disability of each one ceases, it cannot be said that the land-holder as such ceased to be a disabled person, or that the land-holder's disability has determined.

7. Sub-clauses (i) and (ii) of Clause (f) entitle the land-holder to sue. During continuation of the disability, Sub-clause (i), and after its determination Sub-clause (ii) applies. (See Dalchand v. Ramnath, 1965 RD 97. The significance of the term "land-holder" should be the same for both the sub-clauses. If the "landholder" is in a case where there are several co-sharers construed to refer to any one of them separately anomalous positions will arise. In case the disability of one ceases the cause of action for a suit accrues and after the expiry of the

prescribed period of limitation the suit becomes barred by time. The right to sue extinguishes. u/s 204 of the Act, the Asami becomes a Sirdar. Obviously he cannot then be treated as an Asami.

8. But if the other co-sharers remain disabled persons, they continue to possess the right to sue under Sub-clause (i). Their suit cannot however succeed, because the Asami has in the meantime become a Sirdar. The disabled co-sharers become non-suited for no fault of their own; and simply because of the accident that the disability of another co-sharer has determined. Such should not be the result if each co-sharer is independently a landholder. The right to sue of one cannot be affected by the situation of another.

9. In our view land-holder" here means the entire body of co-sharers. So long as any of them are disabled, Sub-clause (i) will apply. Sub-clause (ii) will govern suits when the disability of each of them has determined.

10. In the present case one of the plaintiffs, namely, Smt Beti Kunwar continued to be a disabled person on the date of the institution of the suit. The landholders thus could validly institute the suit under Sub-clause (i) on the ground that they wish to bring the land under their personal cultivation. The suit was rightly decreed by the Board of Revenue.

11. Learned counsel for the appellant relied upon Kamta Prasad v. Board of Revenue 1962 RD 265 in which a learned single Judge of this Court held that a successor of a disabled person was not a disabled person so as to be entitled to the benefit of Sub-clause (i) of Clause (f) of Section 202. The case is not material for our purposes.

12. In the result the appeal fails and is accordingly dismissed, but as no one has appeared for the respondents, there will be no order as to costs.