

(1932) 03 AHC CK 0027
In the Allahabad High Court

Panchanan Banerji and Another	Vs	APPELLANT
Anant Prasad Pandey and Others		RESPONDENT

Date of Decision : 04-03-1932

Acts Referred:

Citation : (1932) 03 AHC CK 0027

Hon'ble Judges : Niamatullah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Niamatullah, J.—This is an appeal by plaintiffs 1 and 2 and arises out of a suit for recovery of possession of a number of plots specified in lists A and B annexed to the plaint and for damages, on the allegation that the principal defendant Anant Prasad has no right to them and that he entered into possession without any lawful title. It is common ground that the land in dispute is part of the zamindari of plaintiffs 1 and 2 and Ishwar Dayal and formed the occupancy holding of one Ram Kishun, who died three years before the institution of the suit. Ishwar Dayal was originally in pleaded as defendant second party, but subsequently transposed to the array of plaintiffs as plaintiff 3. It was alleged by plaintiffs 1 and 3 that Ram Kishun left no heirs and. that in consequence his occupancy rights lapsed. They instituted a suit for ejectment of the subtenants Baldeo and Bholet Bhar. Anant Prasad, the present contesting defendant, intervened, claiming to be the lawful heir of Ram Kishun. The plain, tiffs" suit was decreed on the finding that Ram Kishun left no heir entitled to succeed to his occupancy tenure. Delivery of possession was taken by the plaintiffs. In spite of delivery of possession by the Court, which passed the decree in the suit already referred to, they failed to obtain actual possession which remained with Anant Prasad, who claimed title as heir to Ram Kishun, and also put forward his right as a tenant put into possession by Ishwar Dayal, defendant second party (now plaintiff 3). Accordingly, plaintiffs 1 and 2 brought the present suit in the civil C"ourt for recovery of possession and damages im-pleading Ishwar Dayal, as defendant

second party, on whose behalf Anant Prasad the principal defendant, claimed to be a tenant. The suit was resisted by Anant Prasad on the ground that he was the heir of Ram Kishun and a tenant under a lease granted on behalf of Ishwar Dayal, defendant second party, after the decision in the previous suit. He claimed to be a tenant in respect of the lands of all the cosharers including plaintiffs 1 and 2 and Ishwar Dayal. The issue thus raised being one whether the relationship of landlord and tenant existed between the parties was referred to the Revenue Court which negated Anant Prasad's right as an heir of Ram Kishun, but upheld his plea that he had been admitted into tenancy after the decision of the previous suit. The Court of first instance dismissed the plaintiffs' suit on that finding. The lower appellate Court found on appeal by plaintiffs 1 and 2 that the lands in dispute were let to Anant Prasad by one Balkaran Singh, who was a karinda on behalf of Ishwar Dayal, defendant second party, but that he had no authority to act on behalf of plaintiffs 1 and 2. Accordingly it held that Anant Prasad is not a tenant of plaintiffs 1 and 2, but that he cannot be deemed to be a trespasser. The decree of the Court of first instance was so far modified that joint possession was decreed to plaintiffs 1 and 2. The latter have filed the present second appeal.

2. It has not been argued before us that Anant Prasad is entitled to possession of the lands in dispute as heir of Ram Kishun, the deceased occupancy tenant. His defence rests solely on the plea that the lands in dispute were let to him after the decree in the previous suit. The finding of the lower appellate Court so far as it held that Balkaran Singh, the karinda of Ishwar Dayal, let the land in dispute to Anant Prasad, and had authority to do so on his behalf, must be accepted in second appeal. It is likewise conclusive that Balkaran Singh has no authority to let it on behalf of plaintiff's 1 and 2. The position then is that the land belonging to the three cosharers was let by only one of them. The question is whether the tenant in whose-favour the tenancy was created by one of the three cosharers is entitled to retain possession in spite of the dissent of the other two. We are of opinion that Section 268, Agra Tenancy Act (Act 3 of 1926) governs the case and that the defendant Anant Prasad cannot be considered to be a tenant in respect of the lands in dispute. That section declares that:

where there are two or more cosharers in any right, title or interest, all things required or permitted to be done by the possessor of the same shall be done by them conjointly, unless they have appointed an agent to act on behalf of them all.

3. It is only the possessor of proprietary : right who can let land. The section is therefore clearly applicable and the tenancy could be created by all the cosharers conjointly, and any attempt by only one of them to create a tenancy must be declared to be ineffectual. The defendant Anant Prasad not having been admitted to tenancy by all the three did not acquire the rights of a statutory tenant. This being so, he is not entitled to retain possession as such. His learned advocate argues that he is entitled to retain possession of the undivided share of Ishwar Dayal at whose instance he was placed in possession. This position is however

untenable inasmuch as Ishwar Dayal merely admitted Anant Prasad as a tenant and cannot be deemed to have assigned his proprietary or possessory right in the lands. The only ground on which Anant Prasad has defended the suit, and the only right which he has claimed and could have claimed, is that he is a tenant of the land in virtue of the lease granted by Balkaran Singb on behalf of Ishwar Dayal. If this defence cannot be sustained he must be considered to be in unlawful possession.

4. Another argument which has been put forward on behalf of the defendant Anant Prasad is that Ishwar Dayal who is not ins the array of plaintiffs cannot succeed and obtain possession jointly with plaintiffs 1 and 2, he having himself created a tenancy in favour of the defendant Anant Prasad. We are of opinion that this contention must be rejected. The lease in favour of Anant Prasad having been found to be one granted by an unauthorized person, it confers no right upon the defendant Anant Prasad. There is nothing to prevent Ishwar Dayal from joining the other cosharers to eject one who is found to possess no right in respect of the land in dispute.

5. A learned single Judge of this Court has taken the same view as regards a tenant let into posseesion by one of several cosharers. In Kunwar Singh and Others Vs. Abdur Ali Khan and Others , it was held that where one of the cosharers granted a permanent lease of the joint holding without the consent of the other cosharers, such cosharers "are entitled to treat the lease as a nullity and to eject the lessee. The view is based on the terms of Section 194 of the old Tenancy Act (Act 2 of 1901), which is almost identical with the present Section 266. The lower appellate Court was referred to the cases of Bhola Nath v. Baskin [1894] A.W.N. 127 and Amin Ullah v. Hajirah [1906] 3 A.L.J. 767. We have considered these cases and are clearly of opinion that the question arising before us did not arise and was not decided in them. The lower appellate Court has also referred to a decision of the Board of Revenue reported in Vol. 3, Law Reporter, Allahabad, Section 165. That decision is also not in point. Besides, we find that in two other cases, 3 U.D. p. 355 and 4 U D. 697, the Board of Revenue took a contrary view which is in accord with our own.

6. The result is that this appeal succeeds. It is accordingly allowed. The decrees of the lower Courts are set aside and the plaintiffs' suit for possession is decreed. Their claim to mesne profits shall be inquired into, and if they are found entitled to any mesne profits a final decree shall be passed. The defendant Anant Prasad must pay the costs incurred by plaintiffs 1 and 2 in all the Courts.