
(1929) 12 AHC CK 0071
In the Allahabad High Court

Pashpati Vizia Nand Bahadur

APPELLANT

Vs

Hargovind Rai and Another

RESPONDENT

Date of Decision : 19-12-1929

Acts Referred:

Agra Tenancy Act, 1926 — Section 273

Citation : AIR 1931 All 211 : 122 Ind. Cas. 597

Hon'ble Judges : Bannerji, J;Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bannerji, J.—This is a plaintiff's appeal in a suit for possession over certain plots of land. The defence was that the plot was the ancestral holding of the defendant. The question which appears clearly from the judgment of the lower appellate Court according to it was "whether the appellant is or is not a tenant of the land in suit." How the learned Subordinate Judge in appeal went on to discuss the question whether the defendant was an occupancy tenant or not in a suit relating to an agricultural holding, I am unable to understand. Section 273, Act 3 of 1926, clearly lays down that if in a civil Court the defendant pleads that he holds such land as the tenant of the plaintiff...the civil Court shall frame an issue on the: plea of tenancy and submit the record to the proper revenue Court for the decision of the issue. Para. 6 of the written statement "additional pleas" is as follows:

The land in dispute is the occupancy holding of this defendant which has" been generation after generation in the possession of his ancestor and after them in this defendant's possession. Plaintiff 1 is only a zamindar of the village and the land in dispute is situate within his zamindari.

2. This in my opinion clearly is a question within the purview of Section 273, Agra Tenancy Act, 1926. I therefore set aside the decrees of both the lower Courts and send the case back to the first Court, namely the Munsif of Ballia

under Order 41, Rule 23 and direct that he should proceed to decide the case according to law. Costs so far will abide the result.