

(1936) 02 AHC CK 0013
In the Allahabad High Court

Rajdhari Lal and Others

APPELLANT

Vs

Bishunath Singh and Others

RESPONDENT

Date of Decision : 19-02-1936

Acts Referred:

Citation : AIR 1936 All 867

Judgement

1. This is a plaintiffs' appeal arising out of a suit for ejectment brought by the zamindars against the defendants who were ejected from their holdings. The claim is for the ejectment of the defendants from the house which they occupy on the a badi site. The trial Court held that the house was appurtenant to the holding and the defendants were liable to ejectment from the house and land in dispute. On appeal the learned Judge came to a contrary conclusion. He has remarked that the plaintiff examined himself only and produced no other witnesses and that there was no sufficient evidence on behalf of the plaintiffs to prove that the defendant's ancestors were the tenants when they erected the house in dispute. The plaintiffs led no evidence to show when the house had been actually built or the person who had built it and whether he was a tenant at the time or not. The learned Judge then noted a dictum in *Nabi Mohammad v. Bhagwat Prasad Shukul* 1931 ALJ 649 and preferred to follow the later ruling in *Gopi Shankar v. Lilawati* 1932 ALJ 142 where it was held that:

There is no presumption of law that the house occupied by a cultivator in a village is appurtenant to his holding and either the house or the site must be given up simply because the tenancy has either been lost or has lapsed by death in favour of the zamindar.

2. As regards the observation in the former case it may be pointed out that there the lower appellate Court had held that the defendants were not merely tenants or cultivators but were also dyers and printers who were carrying on business in dyeing and printing. The learned Judge had held that the house had not been built as a tenant's house but as a printer's house and had dismissed the zamindar's suit. A learned Judge of this Court on appeal following certain

previous observations held that there was a presumption that the house was appurtenant to the holding and on this presumption held that the zemindar had established his right to eject the defendants. He accordingly allowed the appeal and decreed the claim. In a Letters Patent appeal it was merely conceded, not expressly decided, that where a village is a purely agricultural village and person is a purely agricultural tenant and occupies a house and site belonging to the zemindar then without any other evidence there would be a presumption that his house is appurtenant to his holding, but it was added that a slight change of circumstances may alter the result as had been pointed out by Knox. J., in *Shohrat Singh v. Jhagru* 1915 30 IC 782. In *Nabi Mohammad v. Bhagwat Prasad Shukul* 1931 ALJ 649 the point was conceded in view of the ruling in *Shohrat Singh's* case (3) and was not considered because it did not arise directly for consideration. The later ruling of this Court has decided the point expressly, and the Court below has acted rightly in following that. It may be pointed out that in this case the plaintiffs alleged in the plaint that the chief source of maintenance of the defendants was cultivation and did not say that that was their only source. On the other hand the defendants in their written statement pleaded that they were carrying on trade and also entered into service in addition to cultivation.

3. We may also add that in this particular case there is an additional evidence which might show that the house was not appurtenant to the holding. There is a clear entry in the *wajib-ul-arz* of the village that a tenant is entitled to remain in possession of the house even when he gives up cultivation. This means that tenants who occupy houses have a right of residence in their houses independently of their holdings so that even if the holding is lost, their right of residence is not gone. We accordingly dismiss this appeal with costs.