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**(1972) 09 AHC CK 0030**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 373 of 1965**

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| Ramesh Chand and Others     | Vs | APPELLANT  |
| Board of Revenue and Others |    | RESPONDENT |

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**Date of Decision :** 25-09-1972

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Uttar Pradesh Land Tenures Legal Proceedings (Removal of Difficulties) Order, 1952 — Section 2  
Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27, 27(1), 27(3)  
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 165, 171, 180, 20, 202

**Citation :** AIR 1973 All 120 : (1973) RD 9

**Hon'ble Judges :** Satish Chandra, J;N.D. Ojha, J;J.S. Trivedi, J

**Bench :** Full Bench

**Advocate :** B.D. Tripathi and K.C. Saxena, for the Appellant; B.D. Mandhyan, J.S. Gupta and V.K.S. Choudhary, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Satish Chandra, J.—A Bench has referred these two connected Special Appeals to a Full Bench because it felt that the decision of another Division Bench in *Gotpal Narain v. Kanchan Lal* AIR 1971 All 5561 required reconsideration.

2. Bhagmal, the respondent, was the original hereditary tenant of the holding in suit. The Zamindars obtained a decree for the ejectment of Bhagmal u/s 171, U. P. Tenancy Act, 1939, on February 7, 1942. In execution possession was delivered to the zamindars on 29th May, 1942. A couple of months later, in July, 1942, the zamindars inducted the appellants, Soran Singh and others as hereditary tenants over the holding in dispute. Some disputes having arisen between Bhagmal and the appellants, the appellants in 1946 filed a suit u/s 59, U. P. Tenancy Act for a declaration that they were the hereditary tenants of the holding. The trial court dismissed the suit, but on appeal it was decreed, and it was declared that the appellants were the hereditary tenants. The Board of

Revenue upheld the appellate decree on 24th December, 1951.

3. During the pendency of the appeal. U. P. Tenancy (Amendment) Act 10 of 1947 came into force. On 13th August, 1947, Bhagmal applied for reinstatement to the holding u/s 27 of the Amending Act of 1947. The hearing of this application appears to have been stayed because of the pendency of the declaratory suit. The application was ultimately allowed by the trial court on 13th July, 1953. Bhagmal was reinstated to the holding; the appellants were declared its sub-tenants entitled to remain in possession for three years, under the proviso to Section 27 (3) of the Amending Act. The appellants went up in appeal but failed. They filed a second appeal which was also dismissed by the Board of Revenue. The appellants then carried the dispute to this Court under writ petition No. 1471 of 1961. The writ petition, was, however, dismissed on 29th July, 1965 leading to special appeal No. 373 of 1965.

4. After the expiry of the three years period for which the appellants were entitled to remain in possession as sub-tenants, Bhagmal on September 20, 1956. filed a suit for ejectment of the appellants u/s 202 of the Zamindari Abolition Act. The suit was decreed on 13th November. 1961. The appellants' appeal as well as their second appeal were also dismissed. The appellants then filed a writ petition in this Court which was dismissed by a learned single Judge on March 2, 1971. Against this judgment the appellants filed special appeal No. 311 of 1971.

5. The following submissions of the learned counsel for the parties raise the following points:--

(1) Whether the declaratory decree u/s 59, U. P. Tenancy Act, operated as res judicata;

(2) Whether the application for reinstatement u/s 27 of the Amending Act of 1947 could be decided on the merits after 30th June, 1952, the date preceding the date of vesting under the Zamindari Abolition Act;

(3) Whether Bhagmal acquired the status of a sirdar under the Zamindari Abolition Act; and

(4) Whether the appellants became asamis or sirdars under the Zamindari Abolition Act.

6. Before the plea of res judicata can be considered, it must be pleaded at the proper stage. In order to establish such a plea, the copy of the judgment and the decree ought to be filed.

We find that this plea was not taken in the proceedings. The appellants who rely upon this plea have not filed copy of the judgments rendered in the declaratory suit u/s 59, U. P. Act. It is hence not feasible to entertain such a plea.

7. The declaratory suit was filed in 1946. The Courts granted a declaration that the appellants were the hereditary tenants as against Bhagmal. Normally, such a

declaration would relate to the rights as they were on the date of the institution of the suit in 1946. It would not affect the change in the rights of the parties, if any brought about by the amending Act 1947.

8. For the appellants reliance was placed upon the might and ought rule of the doctrine of *res judicata* and it was urged that Bhagmal could have and ought to have raised appropriate plea arising out of the Amending Act of 1947 when the declaratory suit was still pending in appeal, when the Amending Act of 1947 came in force. In our opinion, there is no substance in this submission.

9. Section 27 of the Amending Act of 1947 entitled a person elected, *inter alia*, u/s 171, U. P. Tenancy Act, to file an application for reinstatement to the holding, within six months of the commencement of the Act. The Court after hearing the parties, could make an order for reinstatement. Under Sub-section (5) of Section 27 of the aforesaid Act. the rights and liabilities of the plaintiff revived on the making of an order for reinstatement to the holding. Bhagmal could possibly have raised a plea that he was the reinstated hereditary tenant, only after an order of reinstatement had been passed in his favour in proceedings u/s 27 of the Amending Act Till an order of reinstatement was passed, his rights as the original hereditary tenant did not revive. He could not take any plea in the declaratory suit u/s 59 that his rights as hereditary tenant had revived till an order of reinstatement to the holding had been passed in his favour. Such an order was passed for the first time on 13th July. 1953, long after the dismissal of the second appeal by the Board of Revenue on 24th December, 1951. So till the date the declaratory suit was pending in second appeal Bhagmal could not in law raise any useful plea in that suit, on the basis of the Amending Act of 1947. The doctrine of *res judicata* would not bar the application for reinstatement or the subsequent suit for ejectment u/s 202 of the Zamindari Abolition Act under the might and ought rule.

10. The principal question is whether the proceedings for reinstatement could continue after the coming into force of the Zamindari Abolition Act.

11. Section 339 of the Zamindari Abolition Act, *inter alia*, repealed the U. P. Tenancy Act, 1939 with effect from 1st July, 1952. In exercise of the powers conferred toy Section 342 of Zamindari Abolition Act, the State Government issued the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952. This order, *inter alia*, provided that any legal proceeding in respect of any right, privilege, obligation or liability acquired, accrued or incurred under or in pursuance of the U. P. Tenancy Act, 1939, if pending on 30th June, 1952, shall be decided in accordance with the provisions of that Act

12. The question upon which the parties are in controversy is whether proceedings for reinstatement u/s 27 of the Amending Act of 1947 are legal proceedings in respect of any right privilege, obligation or liability acquired, accrued or incurred under the U. P. Tenancy Act, 1939.

13. For the appellants It was urged that Section 27 was not bodily incorporated

in any section or otherwise in the body of the U. P. Tenancy Act 1939. It was an independent provision which retained its efficacy and operation because of the continuance in force of the Amending Act of 1947. A proceeding commenced u/s 27 could not hence be a proceeding under the U. P. Tenancy Act or in respect of any right etc. acquired under that Act

14. The amending Act of 1947 was entitled as the United Provinces Tenancy (Amendment) Act 1947. Its preamble stated that it was an Act further to amend the United Provinces Tenancy Act 17 of 1939. It would show that the legislative intent was to amend the Tenancy Act. Sections 2 to 26 and 32 and 33 of the Amending Act made amendments in various sections of the principal Act namely the Tenancy Act of 1939. Section 27 provides for reinstatement of tenants who had been ejected under Sections 165, 171 and 180 of the principal Act and for the revival of their rights and liabilities as they existed on the date of their ejection. A Division Bench of this Court in Daryao Singh and Others Vs. Board of Revenue and Another, had occasion to consider the effect of the Amending Act of 1947 upon the principal Act of 1939. It was observed that Section 27 deals with the ejections effected prior to the Amendment under Sections 165, 171 and 180 of the principal Act. In a way Section 27 is intended to amend the effect of Sections 165, 171 and 180. Section 27 is in substance a proviso to each of these three sections. Section 27 of the Amending Act was not given a permanent place in the parent Act because Section 27 as its terms would show, was temporary in operation. An application under it could be made within six months from the date of commencement of the Act. The Bench observed that to find out whether or not a certain law amends an existing law, one has to see its pith and substance and not its form. There is no room for any doubt that the scope of Section 27 is the same as that of Sections 165, 171 and 180 of the parent Act. It amends the previous operation of those three sections to a certain extent by nullifying the decrees, which had been passed under them. The very name "Amending Act" (sic?). In view of the wide language of Section 242 of the U. P. Tenancy Act, 1939, which provides that suits and applications of the nature specified in the fourth Schedule shall be heard and determined by the revenue Court, the clear effect was to insert an application u/s 27 of the Amending Act also in the Fourth Schedule. Section 27 was a part and parcel of the U. P. Tenancy Act, 1939. The Bench held that a revision was maintainable u/s 275 of the U. P. Tenancy Act against decisions made in an application for reinstatement u/s 27 of the Amending Act. With respect in our opinion, this decision lays down correct law. Proceedings u/s 27 of the Amending Act are proceedings under U. P. Tenancy Act, 1939. They are proceedings in respect of a right or obligation or liability acquired or incurred under the Tenancy Act. because these proceedings have the effect of nullifying the previous operation of decrees for ejection passed under Sections 165, 171 and 180 of the principal Act. The proceedings u/s 27 were within the purview of the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952. and hence could validly continue and be decided in accordance with the provisions of the Tenancy Act read with the

Amending Act of 1947, notwithstanding their repeal.

15. Learned counsel for the appellants urged that the fact that the Zamindari Abolition Act specifically refers to the Amending Act of 1947 as such, shows that the legislative intent was to treat it as an independent Act and not as a provision amending the Tenancy Act or as introducing any provision therein. Relying on the decision of the Supreme Court in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, it was urged that an Act after its amendment remains and is identified as the principal Act. The Amending Act is not referred to independently. In para. 7 the Supreme Court held that according to the prevailing canons of construction, the rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the Amending Act at all. A perusal of paragraph 7 of the Supreme Court decision shows that this rule applies except where that would lead to a repugnancy, inconsistency or absurdity.

16. In our opinion, the exception applies to the present case. It has been seen that Section 27 of the Amending Act of 1947 operated as a proviso to several sections of the principal Act. Instead of making the same detailed provision in Sections 165, 171 and 180 of the Tenancy Act separately, the Legislature thought it better to make a single separate provision to cover all those sections. Since the provisions of Section 27 were not bodily incorporated in some existing provisions of the principal Act but they were to act only as a proviso thereto, the Zamindari Abolition Act had to refer to the Amending Act specially when it conferred rights on persons reinstated under Clause (c) Section 27 (1) alone. This was necessary in order to identify the persons upon whom rights were to (be) conferred. It was a matter of form. It did not affect the pith and substance of the Amending Act of 1947.

17. The next question for consideration relates to the rights acquired by the parties under the Zamindari Abolition Act. The acquisition of rights under the Zamindari Abolition Act would depend upon the effect of the reinstatement ordered u/s 27 of the Amending Act of 1947. Under Sub-section (3) of Section 27 the Court is to order that the applicant be reinstated in such holding and that any other person in possession of it be ejected therefrom. Its proviso states that if such holding be in the possession of any person to whom the landholder had let it out before the 1st day of September, 1946, the Court, instead of ordering the ejectment of such person, shall, notwithstanding the provisions of any law for the time being in force, declare him to be the sub-tenant of the applicant. The person so declared as sub-tenant shall not be liable to ejectment until after the expiry of three years from the date of the declaration. Sub-section (5) of Section 27 provides:--

"On reinstatement, the rights and liabilities of the applicant existing on the date

of his ejectment or dispossession in respect of the holding or any part thereof from which he was ejected or dispossessed, shall revive subject to the proviso to Sub-section (3)".

The effect of reinstatement is nullification of the operation of the decree for ejectment of the applicant. The rights and liabilities of the applicant existing on the date of his ejectment revive. They are not conferred afresh. On reinstatement the original hereditary tenant becomes the hereditary tenant of the holding, with the same rights and liabilities.

17-A. Corpus Juris Secundum, [Vol. 77. page 362 defines "revive" to mean:

"to bring again to life, to reanimate, to renew, to bring into action after a suspension; to restore or bring again to life; to bring back to life an object which has become moribund ....."

This suggests that a revived right or obligation had till then remained in a state of suspension and became active or reanimate on revival. The original rights and liabilities of the applicant continued to remain in existence, though In a state of suspension. This coupled with the fact that the effect of the decree for ejectment was nullified, suggests that in the eve of law the applicant remained a tenant during the period between his ejectment and reinstatement, but since he was out of possession he could not actively exercise his rights or be subject to his liabilities.

18. It Is settled that a zamindar cannot lawfully superimpose a person as a tenant on the holding of an existing tenant. With the revival of the tenancy rights of the applicant, the position in law would be that the person who was inducted on the holding by the zamindar after the ejectment of the original tenant, would no longer be entitled to the rights of status of a hereditary tenant. Even if initially rights as hereditary tenant accrued in favour of such inducted person, they will stand nullified by the order of reinstatement. Two persons cannot at the same time be validly hereditary tenants of a holding. When Sub-section (5) of Section 27 provides for the revival of the rights of the original tenant, its necessary consequence and effect is the nullification of whatever rights may have initially accrued to the subsequently inducted person. The nullification is co-extensive with the revival. Since the pre-existing rights and liabilities of the original tenant revive, their revival can be effective only if the nullification of the rights and obligations of the subsequently inducted tenant is co-extensive in duration. The subsequently inducted tenant could not hence validly say that he was ever the hereditary tenant of the holding.

19. So, even if the subsequently inducted person may have been a hereditary tenant on the date preceding the date of vesting, namely 30th June, 1952, yet the effect of the order of reinstatement passed subsequent to that date is retrospective nullification of those rights with the result that such a person cannot be deemed to be hereditary tenant on 30th June, 1952. In this view, such a person cannot claim to have become a sirdar u/s 19 of the Zamindari Abolition

Act on the footing that he was a hereditary tenant of the holding on 30-6-1952.

20. Section 19 of the Zamindari Abolition Act confers sirdari rights, on inter alia, hereditary tenants who held the holding or were deemed to hold it as such on 30th June 1952. The effect of the order of reinstatement is that the reinstated tenant will be deemed to have held the holding as a hereditary tenant on 30th June, 1952. The reinstated tenant becomes a sirdar u/s 19, of the Zamindari Abolition Act.

21. The question then arises as to the status of the subsequently inducted person. It has been seen that his status as a hereditary tenant is nullified by the order of reinstatement. Under the proviso to Section 27 (3) the Court is to declare such person as the subtenant of the applicant, entitled to remain in possession for a fixed period of three years from the date of the declaration. The proviso does not expressly say that the declaration as a sub-tenant is to be prospective. The only prospective provision is about exemption from liability to ejectment for three years from the date of the declaration. In our opinion, the proviso ought to be read as having the effect of a retrospective declaration as a sub-tenant with a prospective immunity from ejectment for three years. Read this way, the proviso has the merit of not leaving a vacuum in regard to the rights of the inducted person, for the period between his induction and the date of the declaration, as sub-tenant. The declaration as sub-tenant is effective for this prior period as well with the result that for this intervening period the applicant remains the hereditary tenant, the subsequently inducted person being his sub-tenant.

22. This construction is corroborated by Section 20 of the Zamindari Abolition Act. u/s 20 (a) (ii) a sub-tenant becomes an adhivasi but there is an express exclusion of a subtenant referred to in the proviso to Section 27 (3) of the Amending Act of 1947. A person declared to be a sub-tenant under the proviso does not acquire adhivasi rights. Similarly, such a subtenant does not acquire adhivasi rights under Clause (b) (i) of Section 20 by virtue of the express exclusion of such person by Sub-section (2) of Section 20. This would show that though such a person was recognised to be a sub-tenant for a period prior to the order of reinstatement and declaration as a subtenant, including the date preceding the date of vesting, yet he was not given adhivasi rights. The reason is that such a person was conferred asami rights under Clause (c) of Section 21 of the Zamindari Abolition Act. The subsequently inducted person becomes an asami u/s 21 and hence is under a liability to ejectment u/s 202 of the Zamindari Abolition Act.

23. The view that on reinstatement pre-existing rights revive retrospectively is supported by a decision of a Bench in *Sri Ram Pathak v. Board of Revenue* 1956 All LJ 343). In that case a trespasser mentioned in Clause (c) of Section 27 (1) was reinstated. After reinstatement a suit for his ejectment was again filed. Previously the period of limitation for a suit u/s 180 of the Tenancy Act for ejectment of a trespasser was three years. By Section 32 of Act 10 of 1947 the

period was reduced to two years. The Bench held that for the second suit for ejectment (filed after the commencement of Act 10 of 1947) the applicable period of limitation will be two years. It was also held that if the reinstated trespasser had completed two years of possession prior to his original ejectment, he would be entitled to retain possession after reinstatement and will not be liable to ejectment again. But if he had not completed two years at that time, the second suit for ejectment will succeed. This shows that the period of possession prior to the original ejectment was liable to be recognised and was a material circumstance for deciding the rights in the second suit for ejectment. After completion of two years, a trespasser became a hereditary tenant u/s 180 (2), U. P. Tenancy Act. The effect of the reduction in the period of limitation was retrospectively made applicable to the possession of the trespasser prior to the commencement of Act 10 of 1947, as a result of the retrospective operation of the order of reinstatement. The decision in Sri Ram Pathak's case was upheld by a Full Bench in Kedar Nath Vs. Jamuna and Another, .

24. Assuming however, that the correct legal position is that the person declared to be a sub-tenant under the proviso aforesaid becomes a sub-tenant only from the date of the declaration, the result will be that such a person will not acquire asami rights in cases where the declaration is made after the date of vesting; because Section 21 confers asami rights on persons who were sub-tenants on the date preceding the date of vesting, namely on 30th June, 1952. In that event the appellants did not become asamis. They did not acquire any other status under the Zamindari Abolition Act; their only right was to remain in possession for three years under the proviso to Section 27 (3) of the Amending Act of 1947. Thereafter they had no immunity from ejectment. Their right to remain in possession as sub-tenants having extinguished on the expiry of three years, their possession thereafter would be as trespassers. A trespasser is liable to be ejected u/s 209 of the Zamindari Abolition Act.

25. A suit u/s 209 lies in the same Court as a suit u/s 202, It is true that the present proceedings arise out of the suit for ejectment u/s 202. But the jurisdiction of the Court does not depend upon the label given to a suit for ejectment. If in its pith and substance the suit is within the competence of a Court, the Court can entertain and decide it. It is thus clear that even on this line of reasoning the appellants cannot gain immunity from ejectment.

26. It was urged that the subsequently inducted tenant being a hereditary tenant till the passing of the order of reinstatement, he in fact as well as in the eve of law, was a hereditary tenant on the date preceding the date of vesting mentioned in Section 19 of the Zamindari Abolition Act, in those cases where the order of re-instatement is passed after the date. u/s 19 the acquired sirdari rights. Having acquired rights of sirdar he can lose them only in the contingencies mentioned in Section 190 of the Zamindari Abolition Act, which provides for the extinguishment of sirdari rights. The effect of the reinstatement order is not mentioned in Section 190 as operating to extinguish sirdari rights.

The submission is plausible in so far as it goes.

27. Section 342 of the Zamindari Abolition Act confers upon the State Government power to issue orders to remove difficulties. Under Clause (a) thereof the State Government can by order direct that this Act shall have effect subject to such adaptations and modifications as may be mentioned in it. The Removal of Difficulties Order 1952. provided that pending proceedings shall continue to be decided in terms of the repealed U. P. Tenancy Act or the Land Revenue Act as the case may be. The result was that those proceedings were liable to be decided unaffected by the provisions of the Zamindari Abolition Act. If in a pending proceeding there is a dispute as to who was the hereditary tenant, the effect of such proceeding continuing and being decided unaffected by the Zamindari Abolition Act necessarily is that the decision reached in that proceeding will prevail and the rights under the Zamindari Abolition Act will accrue on the basis of and in accordance with such decision. The effect of Section 342, Zamindari Abolition Act read with the Removal of Difficulties Order and the order of reinstatement, would be the retrospective creation or nullification of the rights of the parties on the date preceding the date of vesting. Sirdari rights u/s 19 of the Zamindari Abolition Act would accrue in favour of the person who is held to be the hereditary tenant in such proceedings. The declaration of rights having retrospective effect, the person declared to be entitled to reinstatement as a hereditary will be deemed to be the hereditary tenant on the date preceding the date of vesting, the subsequently inducted tenant being deemed only a sub-tenant. Section 342 acts as a proviso or an exception to Section 190.

28. It was also submitted that if the Zamindari Abolition Act intended to confer rights on reinstated tenants mentioned in Clauses (a) and (b) of Section 27 (1) of the Amending Act of 1947, then there would have been as clear and specific a provision in regard to them, as the Legislature made for elected persons for whom reinstatement was provided by Clause (c) of Section 27 (1) aforesaid. There is an underlying fallacy in this submission. Clauses (a) and (b) of Section 27 (1) deal with tenants ejected under Sections 165 and 171 of the U. P. Tenancy Act. They apply, inter alia, to hereditary tenants. But Clause (c) refers to a particular class of trespassers, namely those who were recorded as occupants on 1st January, 1938, in a revised or corrected record. Such persons were not recognised by the Tenancy Act as having any rights as a tenure-holder. Sub-section (5) of Section 27 provided for revival of the rights and liabilities. On reinstatement the applicant gets the same rights and liabilities which he had on the date of ejectment. A trespasser had no rights. He was liable to ejectment u/s 180 as a trespasser. Since such a person did not get any right to the holding in spite of reinstatement, it was necessary to confer rights on him. That is why he has been specifically mentioned in Clause (1) of Section 16 of the Zamindari Abolition Act, Under it he becomes sirdar if he was reinstated to land to which Section 16 applies and was in possession. He gets adhivasi rights u/s 20 (b) (i) if he was recorded as an occupant in 1356 Fasli. Since persons mentioned in Clauses (a) and (b) of Section 27 (1) of the Amending Act acquired tenancy

rights on reinstatement, it was not necessary to provide for them separately under the Zamindari Abolition Act. As recognised tenants they acquired rights under Sections 18 and 19. The Legislature while enacting the Zamindari Abolition Act made it clear that a trespasser who was recorded as an occupant on 1-1-1938 would not Set any rights under \_the Zamindari Abolition Act even if he is reinstated, in those cases where he is reinstated to land which constituted a part of the holding of a tenure-holder mentioned in the explanation to Section 16. This exception, however, does not apply to subsequently inducted tenant, because on reinstatement of a trespasser mentioned in Clause (c) the subsequently inducted tenant, if any, becomes a sub-tenant; and the explanation to Section 16 does not refer to land included in the holding of a sub-tenant Since on the reinstatement of such a trespasser the subsequently inducted tenant became a sub-tenant, it was all the more necessary to expressly confer rights on such reinstated trespasser, because otherwise the rights of the sub-tenant would have prevailed over a trespasser. This situation could not arise between a reinstated tenant and a person declared to be a sub-tenant.

29. On these considerations, the decision in Gopal Narain and Another Vs. Kanchanlal and Others, appears to us to lay down the law correctly. In our opinion. Bhagmal became a sirdar. The appellants acquired the status of sub-tenants. They were liable to ejectment on the expiry of three years from the date of the order of reinstatement. The application for reinstatement was rightly allowed. The suit for ejectment u/s 202, Zamindari Abolition Act, was validly decreed.

30. In the result, both the appeals, fail and are accordingly dismissed with costs.