

(1960) 03 AHC CK 0057
In the Allahabad High Court
Case No : S. Civ. A. No. 381 of 1954

Roshan Khan and Others

APPELLANT

Vs

Mohan Lal and Others

RESPONDENT

Date of Decision : 03-03-1960

Acts Referred:

Uttar Pradesh Land Reforms (Supplementary) Act, 1952 — Section 3(1)(b)

Citation : (1960) 30 AWR 681

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : Hyder Husain, for the Appellant; R.N. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Tandon, J.—These three appeals arise out of three suits commenced by three different persons against one Roshan Khan and some others as Defendants. Roshan Khan appeared as a Defendant in everyone of the three suits. The relief asked in every one of them was eviction of Roshan Khan along with the other Defendants who were alleged to be concerting with him in retaining possession over certain agricultural plots. The Plaintiffs claimed that they were Sirdars of the plots in question while Roshan Khan was in possession of them as a licensee on promise to pay half the produce in return. Roshan Khan in turn claimed that he himself was the chief tenure holder of the plots. He denied the right of the Plaintiffs to any interest in the land. Alternatively he relied on Section 3 of the UP Land Reforms (Supplementary) Act, 1952, claiming that he was in any case an Adhivasi of those lands. Both the courts below have found that Roshan Khan along with other Defendants has been in possession of the lands in suit. It has further been held that they were in cultivation of the same during the year 1359 Fasli and that they so held that land on promise to deliver to the Plaintiffs half the produce from those lands. They have, however, decreed the three suits on the ground that Roshan Khan had not proved that he was the Sirdar of the plots in question with his possession was that of a licensee only. The lower appellate

court has not recorded any finding on the application though the trial court has summarily rejected it on the ground that it failed to confer any right on the Defendants. Roshan Khan and others dissatisfied with the decrees passed in the said three suits have, therefore, come up in second appeal to this Court.

2. These appeals must succeed on the findings reached by the courts below. They have held that Roshan Khan and others were in cultivatory possession of the plots. They have further held that they were so in possession in 1359F. By a curious reasoning, however, the lower appellate court came to the conclusion that these persons were licensees and as such failed to acquire any right in the plots. Section 3 of the UP Land Reforms (Supplementary) Act, 1952, in so far as it is relevant provides that every person who was in cultivatory possession of any land during the year 1359F, shall with effect from the appointed date (appointed date means the 1-7-52) be an Adhivasi if the Bhumidar or the Sirdar under whom he is in possession is not a person referred to in items (i) to (vi) of Sub-section 2 of Section 10 of the UP ZA and LR Act, 1950. The Explanation at the end of Sub-section (1) of this section also provides that, a person shall not be deemed to be in cultivatory possession of the land, if he was cultivating it as a mortgagee with possession or a thekedar or he was merely assisting or participating with a Bhumidhar, Sirdar, etc. concerned in the actual performance of the agricultural operations. It was not the suggestion of the Plaintiffs that Roshan Khan and others were in possession as mortgagee or thekedar or were assisting them or participating with them in the performance of agricultural operations. Their case, on the other hand, was that they were in cultivatory possession of these plots and delivered to them half the produce in return. They were thus persons who clearly were in cultivatory possession of the land, a fact held by the courts below also. Sub-section (1) of Section 5 read with Clause (b) thereof clearly entitled Roshan Khan and others to the right of Adhivasi in these lands. The reasoning of the courts below that they were licensees has really no meaning particularly so when the case is covered by the provision in Clause (b) of Sub-section (1) of Section 3 of the Act of 1952. As Adhivasi the Plaintiffs could not evict them and the suit for their eviction deserved to be dismissed.

3. In the result, therefore, all the three appeals succeed. The decrees passed by the court below are set aside and the three suits are dismissed with costs throughout.