

(1965) 07 AHC CK 0035
In the Allahabad High Court
Case No : Second Appeal No. 3771 of 1962

Sheo

APPELLANT

Vs

Brij Mohan

RESPONDENT

Date of Decision : 08-07-1965

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 180(2)

Citation : (1965) 35 AWR 562

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a Defendant's second appeal from the concurrent decisions of the courts below decreeing the Plaintiff's suit for his ejectment from certain plots. The Plaintiff Respondent, Brij Mohan, alleged that he acquired the land in dispute from one Niwas who had become the bhumidhar thereof on the date of vesting under the UPZA and LR Act; that as Niwas was a disabled person, he could not cultivate the land himself and the Defendant Appellant Sheo occupied it during the period of disability; that on 20th June 1956 Niwas sold his bhumidhari rights to the Plaintiff; and that the Plaintiff wanted to cultivate the land himself but the Defendant refused to vacate it; hence the suit.

2. The Defendant resisted the suit and pleaded that he had become sirdar of the land, having been in adverse possession for more than two years before the date of the vesting and acquired hereditary rights in it u/s 180(2) of the U.P. Tenancy Act. He further pleaded, in the alternative, that he had acquired adhivasi rights because of his occupation of the land in 1356 F. and 1359 F. He also pleaded that the question whether he had acquired adhivasi rights had already been decided in a previous suit filed by Niwas for his ejectment and this decision operated as res judicata against the present Plaintiff who claimed through Niwas.

3. The trial court rejected all the pleas in defence and held that the Plaintiff was

the bhumidhar of the land and that the detendant was only an asami and, therefore, liable to ejectment. It also held that the previous decision did not operate as res judicata in the present suit. These findings were confirmed by the lower appellate court, and the Defendant has now come to this Court in second appeal.

4. Mr. K.P. Singh has argued that the finding of the revenue court in the earlier suit that the Defendant had be-come adhivasi of the land is a bar to the present suit. I cannot agree. When the former suit was filed there was no provision in the UPZA and LR Act relating to asamis and Niwas could not have asked for the Defendant's ejectment on the ground that he was only an asami of the land. Subsequently, after the decision in the suit, the Act was amended with retrospective effect with the result that a fresh cause of action accrued to the 5. Mr. Singh then argued that the title of Niwas must be deemed to have been extinguished u/s 180 of the U.P. Tenancy Act when his suit for ejectment of the Defendant was dismissed. This argument is based on a misapprehension of the effect of Sub-section (2) of Section 180 of the U.P. Tenancy Act which provides in effect that if a person entitled to eject a trespasser takes no action his title shall be extinguished and the latter shall acquire the status of a hereditary tenant. But the Sub-section does not apply where the person entitled to eject does file a suit. Therefore, the Defendant could only rely on the judgment in his favour in that suit, but as indicated above that judgment does not bar the present suit which is based on a fresh cause of action under a new statute.

6. No other point was urged.

7. The appeal is dismissed with costs.